Supreme Court, U.S.
FILED

971663 JAN 29 1998

OFFICE OF THE CLERK

In The

Supreme Court of The United States

October Term, 1997

No. _____

Lonnie E. Willoughby, Jr.
Petitioner

v.

Alan B. Fields, Jr., James L. Rose,
Tito S. Smith, Larry M. Willoughby,
Leona S. Willoughby

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Lonnie E. Willoughby, Jr.
c/o P.O. Box 127
Mauldin, SC 29662
(864) 288-8924

182 pp

QUESTIONS PRESENTED FOR REVIEW

Petitioner, proceeding *pro se*, has been involved in ongoing civil litigation in the federal courts since August 1992. He has also been involved in related civil litigation in the Florida courts since August 1992. He has initiated eight appeals in the Florida courts, proceeding pro se, and has initiated one appeal in the federal courts, the appeal that is now brought before this Court. The questions presented by this petition are:

1. Is it an extreme denial of due process of law, pursuant to **U.S. Const., Amend. 5, 7, and 14**, for a United States District Judge to summarily ignore, disregard, or discount the validity and applicability of *pro se* plaintiff's evidence, as presented during opposition to summary judgment proceedings?

2. Is it an extreme denial of due process of law, pursuant to **U.S. Const., Amend. 5, 7, and 14**, for a federal appellate panel of judges to affirm a district court's summary judgment dismissal of plaintiff's complaint(s) when there is substantial evidence in the record on appeal to show that summary judgment should have been denied because the case should have gone to jury?

3. Should a United States District Judge, or a United States Appellate panel of judges, take responsible actions to promptly initiate appropriate federal investigation of district court litigant's responsible, well documented allegations about abusive vindictive harassment judicial actions by state judicial officer(s), when said state actions appear to be calculated to obstruct justice in the ongoing district court litigation?

QUESTIONS PRESENTED FOR REVIEW

(CONTINUATION)

4. Is it an extreme denial of due process of law, pursuant to **U.S. Const., Amend 14**, for two opposing attorneys to conspire with each other to perpetrate fraudulent litigation in a state litigation against a non-resident defendant trustee and manipulate pretrial discovery and the trial itself in such a way as to ensure that the defendant trustee will lose case when he should have won the case?

5. Is it a denial of due process of law, pursuant to **U.S. Const., Amend. 5, 7, and 14**, for a U.S. district judge to ignore blatant violations of Rule 11, Fed.R.Civ.P.

6. Is it a denial of due process of law, pursuant to **U.S. Const., Amend. 5, 7, and 14**, for a U.S. Magistrate Judge or a U.S. district judge to summarily ignore *pro se* litigant's motions for reconsideration of unfair rulings and orders of the district court?

7. What is the minimum amount of evidence required to overcome summary judgment motion when a civil conspiracy is pled?

PARTIES TO THE PROCEEDINGS

This case arises from a judgment of the United States Court of Appeals for the Eleventh Circuit which affirmed the judgment of the United States District Court for the Middle District of Florida, Jacksonville Division. Petitioners and Respondents, as identified in the caption, are the only parties. No publicly held companies were parties to the litigation below.

TABLE OF CONTENTS

QUESTIONS PRESENTED .....i,ii

PARTIES TO THE PROCEEDINGS iii

TABLE OF AUTHORITIES v

OPINIONS AND ORDERS BELOW 2

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4-11

A. Proceedings Below 4

B. Background and Facts 5

ADDITIONAL BACKGROUND INFORMATION 11

REASONS FOR GRANTING THE PETITION 19

CONCLUSION 30

TABLE OF AUTHORITIES

Cases Page

Commissioner v. Sunnen,
333 US 591, 92 L.Ed. 898, 68 S.Ct. 715 28

Ex Parte Graham,
136 Fla. 20, 186 So. 202 (1939) 9

Faretta v. California,
95 S.Ct. 2525, 422 U.S. 806,
45 L.Ed.2d 562 (1975) 25

Fisher v. Shamburg,
624 F.2d 156 (10th Cir. 1980) 23

Florida Physician's Insurance Reciprocal v. Baliton,
436 So.2d 1110 (Fla. 4th Dist. 1983) 9

Pioneer Inv. Services v. Brunswick Associates,
113 S.Ct. 1489 (1993) 22

Rivera-Berrios v. Stefanos,
649 So.2d. 881 (Fla.App. 5th Dist. 1994) 14

S.L.T. Wharehouse v. Webb,
304 So.2d 97 (Fla. 1974) 8

United States v. Torres,
720 F.2d 1506 (11th Cir. 1983) 23

United States v. Barrow,
363 F.2d 62 (3rd Cir. 1966) 23

Willoughby v. Dowda and Fields, Chartered,
643 So.2d 1098 (Fla. App. 5th DCA 1994) ... 8

Miscellaneous

Constitution of the United States, Amend. 5, 7, and 14 19

Fla.R.Civ.P. 1.190(b) 18

Fla.R.App.P. 9.110(k) 8

In The

Supreme Court of The United States

October Term, 1997

No. _____

Lonnie E. Willoughby, Jr.
Petitioner

v.

Alan B. Fields, Jr., James L. Rose,
Tito S. Smith, Larry M. Willoughby,
Leona S. Willoughby--

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the **Judgment** and the unpublished **Opinion** of the United States Court of Appeals for the Eleventh Circuit; both documents were rendered on September 16, 1997.

JUDGMENTS, OPINIONS, AND ORDERS BELOW

The **Judgment** of the United States Court of Appeals, dated September 16, 1997, is set forth in the **Appendix** at page **1a**. The Judgment affirmed the District Court's Judgment.

The **Judgment** of the United States District Court is set forth in the **Appendix** at page **7a**.

The **Final Order** of the United States District Court is set forth in the **Appendix** at page **8a**. The **Order** granted summary judgment to four of the five defendants and dismissed without prejudice the fifth defendant.

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Eleventh Circuit was issued and judgment entered on **September 16, 1997.**

A timely petition for rehearing was denied by the United States Court of Appeals on **October 31, 1997,** and a copy of the order denying rehearing is set forth in the **Appendix** at page **3a**. The jurisdiction of this Court rests on **28 U.S.C. Section 1254(1) (1988).**

CONSTITUTIONAL ISSUES INVOLVED

The **Fifth Amendment** of the United States Constitution states:

> **No person shall .... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**

The **Seventh Amendment** of the United States Constitution states:

> **In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.**

The **Fourteenth Amendment, Section 1** of the United States Constitution states:

> **All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

STATEMENT OF THE CASE

A. Proceedings Below

The judgment sought to be reviewed is that of the United States Court of Appeals for the Eleventh Circuit in the case entitled **Lonnie E. Willoughby, Jr., Plaintiff-Appellant, Janie R. Willoughby, Plaintiff, versus Alan B. Fields, Jr.; James L. Rose; Tito S. Smith; Larry M. Willoughby, Leona S. Willoughby, Defendants-Appellees, Circuit Court, Seventh Judicial Circuit, in and for Putnam County, Florida, Defendant.**

The **Judgment** of the appellate court was entered on September 16, 1997, is set forth in the **Appendix** at page **1a**. A copy of the unpublished **Opinion** of the appellate court, also entered on September 16, 1997, is set forth in the **Appendix** at page **5a**. A timely petition for rehearing was denied on October 31, 1997, as set forth in the **Appendix** at page **3a**.

Appellate judgment allegedly resulting from a **de nova** review of several disputed issues of material fact regarding the district court's final **Order** granting summary judgment to four of the five defendants (after more than three years of litigation) and dismissing without prejudice the plaintiff's complaints against the fifth defendant, Attorney James L. Rose. Said district court **Judgment** ordered and adjudged that the plaintiff take nothing and dismissed all complaints against the five defendants; therefore it was a final judgment. The **Final Order** and the **Judgment** are set forth in the **Appendix** at pages **8a** and **7a** respectively.

B. Background and Facts

Defendants Tito Smith, Larry and Leona Willoughby

During the district court litigation, Plaintiff Lonnie E. Willoughby, Jr., **hereinafter Lon Jr.**, proceeded *pro se*, and he amended his **Complaint** one time. The complex **Amended Complaint** contained complaints against individual defendants and also contained a comprehensive complaint showing that multiple defendants had participated in a heinous conspiracy to perpetrate fraudulent civil litigation against Trustee Lon Jr. during "Equity Court" litigation in the Florida courts (trial and appeal) during 1989-1990.

The district court's final **Order** was rendered after three years of litigation. The final **Order** claimed that the plaintiff's complaints against Defendant Attorney Tito S. Smith, Larry M. Willoughby, and Leona S. Willoughby were frivolous and granted the defendants' joint motion for summary judgment. See **Appendix** at page **8a**; also see the order at page **14a**.

Appellant Lon Jr. disputed the "**frivolous complaints**" issue in his *pro se* appeal briefs, claiming that the record on appeal showed that his complaints against said defendants were not frivolous complaints.

The summary judgment disposition in favor of said defendants was due for **de nova review** on appeal; consequently, the disputed "frivolous complaints" issue would simultaneously receive **de nova review** by the Eleventh Circuit's panel of judges.

Lon Jr's appeal showed that neither opposing party legal counsel nor the district judge had identified any specific defect in Lon Jr's **Amended Complaint**

pleadings during the extensive summary judgment proceedings. In addition, no one had shown that the plaintiff's evidence failed to be sufficient for any specific element of any complaint. Therefore, Appellant Lon Jr. contended that there was no legitimate basis for ruling that his complaints against said defendants were frivolous. Petitioner Lon Jr. believes it was an extreme miscarriage of justice to dismiss his exceptionally important precedent setting complaints through summary judgment and characterize them as frivolous complaints.

Appellant Lon Jr. reported on appeal that his complaints against said defendants were apparently precedent setting complaints of first instance in the Eleventh Circuit and the Fourth Circuit, and such complaints were needed to establish a precedent setting case showing that federal courts will provide a fair and impartial judicial forum for civil prosecution of an alleged unfair, unethical fraudulent litigation scheme between opposing attorneys to vindictively harass and severely persecute a nonresident litigant.

Lon Jr's *pro se* legal briefs in the district court had already shown that case law decisions from other courts provided substantial support for his precedent setting complaints about an unfair and unethical scheme to perpetrate fraudulent litigation against an opposing party. However, the Eleventh Circuit panel **affirmed** the district court's summary judgment dismissal of Lon Jr's amended complaints against said parties, thereby **allowing** Plaintiff Lon Jr's precedent setting complaints against Attorney Tito Smith, Leona and Larry Willoughby to remain characterized as "**frivolous complaints**".

BEST AVAILABLE COPY

Defendant Alan B. Fields, Jr.

The **district court's** final **Order** also granted **Defendant Alan Fields' Supplemental Motion for Summary Judgment (Doc. 298)**, based upon a Florida circuit court order that had dismissed with prejudice Defendant Lon Jr's compulsory counterclaims against Counterdefendant (attorney) Alan B. Fields, Jr. in the Florida circuit court case.

Lon Jr's compulsory counterclaim against Attorney Fields in the Florida civil litigation was similar to the individual complaint alleged against Defendant (attorney) Fields in Lon Jr's federal district court case below. However, the federal case also contained a separate complaint issue alleging that Defendant Fields was one of the conspirators in the heinous scheme to perpetrate fraudulent litigation against Trustee Lon Jr. during Florida civil litigation in 1989-1990.

Defendant Lon Jr's compulsory counterclaim in the Florida circuit court case (filed in 1992) did not contain a complaint against Attorney Fields alleging participation in that conspiracy because that specific complaint issue had been properly and timely filed in the federal district court case against Attorney Fields and other defendants alleged to be co-conspirators.

Counterclaimant Lon Jr. timely filed his **Notice of Appeal** in the Florida litigation regarding the dismissal with prejudice of his counterclaims against the plaintiff law firm, Dowda and Fields, Chartered, and its chief officer, Attorney Alan Fields (sued in his individual capacity). Lon Jr. appealed the dismissal with prejudice order because it appeared to qualify as a "partial final judgment" - due to the fact that it dismissed Counterdefendant Alan Fields from the lawsuit entirely.

The Florida Rules of Appellate Procedure, **Fla.R.App.P.**, address this situation in **Rule 9.110(k), Review of Partial Final Judgments,** and states:

> **Except as otherwise provided herein, partial final judgments are reviewable either on appeal from the partial final judgment or on appeal from the final judgment in the entire case. If a partial final judgment totally disposes of an entire case as to any party, it must be appealed within 30 days of rendition.**

In the same Florida circuit court case, Defendant Lon Jr. had previously used this rule to appeal an improper dismissal of his compulsory counterclaims. Proceeding *pro se*, Appellant Lon Jr. was successful in getting his compulsory counterclaims reinstated. This appeal was reported as **Willoughby v. Dowda and Fields, Chartered, 643 So.2d 1098 (Fla. App. 5th DCA 1994).**

In this second dismissal action, the appellees promptly moved for dismissal of the appeal. The appellate court subsequently dismissed Lon Jr's appeal, allegedly on the basis that the appeal had been filed prematurely. The one page dismissal order simply cited **S.L.T. Wharehouse v. Webb, 304 So.2d 97 (Fla. 1974)** as the basis for dismissing Lon Jr's appeal. Therefore, it is self-evident that the appellate "motion panel" did not accept the circuit court's dismissal order as being an appealable "partial final judgment", pursuant to **Florida Rules of Appellate Procedure, Rule 9.110(k) - [Fla.R.App.P. 9.110(k)].**

If the circuit court's dismissal order is not a partial final judgment regarding Counterdefendant Alan B.

Fields, Jr., then it was plain error for the federal district court judge to use said dismissal order as a *res judicata* basis for summary judgment dismissal of Plaintiff Lon Jr's related complaint against Defendant (attorney) Alan Fields, and also simultaneously dismiss Lon Jr's separate complaint against Defendant Fields wherein it was alleged that Attorney Fields had participated in a heinous conspiracy to perpetrate fraudulent litigation against his own client, Defendant Trustee Lon Jr.

The circuit court's dismissal order was allegedly issued as a sanction against the nonresident defendant for an alleged discovery violation, although the specific issue used to justify said sanction was an unconstitutional demand pursuant to Florida law; a Florida court cannot require defendant to pay opposing party's attorney fees as a penalty for defendant not participating in scheduled discovery, unless the defendant has been convicted of contempt of court regarding that issue. See **Ex Parte Graham, 136 Fla. 20, 186 So. 202 (1939)** and see **Florida Physician's Insurance Reciprocal v. Baliton, 436 So.2d 1110 (Fla. 4th Dist. 1983).**

Defendant Lon Jr. had timely filed his motion for a protective order regarding the disputed discovery action, but the motion was not adjudicated before the scheduled deposition date occurred. Because the basis used to dismiss Lon Jr's compulsory counterclaims was an unconstitutional demand for attorney fees, the dismissal should be reversed - whenever Defendant Lon Jr. is allowed to appeal said dismissal order.

Petitioner Lon Jr. contends that the district judge erred when he allowed Defendant Alan Fields to use the Florida circuit court dismissal order as a *res judicata* basis for summary judgment dismissal of all of Plaintiff Lon Jr's complaints against Defendant Fields.

The district judge's final order also erroneously claimed that the dismissal order (Florida circuit court's order) had been affirmed on appeal. See **Appendix** at 8a, page 3, paragraph 1, lines 12,13 of said order.

Defendant Fields' **Motion for Supplementary Summary Judgment (Doc. 298)** provided a copy of the appellate court's dismissal order, and said order clearly did not affirm the circuit court's dismissal order. The order simply dismissed Lon Jr's appeal as being filed prematurely: the trial court's dismissal order apparently did not qualify as a "partial final judgment" with the appellate panel. Lon Jr's appeal was dismissed quickly - before he had time to prepare his **Initial Brief.**

This very important error was identified in Lon Jr's timely filed **Rule 59 Motion** in the district court; the error was also identified in his subsequent appeal. However, the district judge summarily ignored this exceptionally important error, and the appellate panel also summarily ignored this very serious judicial error.

Defendant James L. Rose

Defendant Attorney James L. Rose had moved for summary judgment, but the district judge did not grant Rose's summary judgment motion. The district judge chose to dismiss Lon Jr's complaints against Defendant Attorney Rose without prejudice although it was clear, or should have been clear, to the judge that the statute of limitations had already run on Lon Jr's complaints at that point in time. Therefore, the dismissal without prejudice was effectively a dismissal with prejudice.

Substantial Justice

Lon Jr. realizes that the only viable alternative available to reverse the decisions rendered by the district court and the circuit court of appeals, is to petition the Supreme Court of the United States for a writ of certiorari that will subsequently provide a detailed review of the unfair and unethical judicial actions taken in the courts below to systematically deny Plaintiff Lon Jr. a fair and impartial judicial forum for presenting his very important precedent setting complaint issues in a jury trial.

It is obvious to Petitioner Lon Jr. that the federal magistrate judge and the district court judge and the appellate panel of judges collectively acted in an unfair and unethical manner to "help" the three attorney defendants avoid civil prosecution for their respective unethical attorney actions in conspiring to perpetrate fraudulent litigation against the nonresident Trustee, Lonnie E. Willoughby, Jr., in the Florida courts (circuit court litigation and the subsequent appeals).

Lon Jr. believes the litigation records prove convincingly that he was denied a fair and impartial judicial forum in the federal district court and subsequently denied a fair and impartial de nova appeal.

ADDITIONAL BACKGROUND INFORMATION

Shortly after Plaintiff Lon Jr. sued Florida Attorney Alan B. Fields, Jr. in the federal district court (8/11/92), along with four other defendants, Attorney Fields' Florida law firm, **Dowda and Fields, Chartered**, quickly sued nonresident Lon Jr. in the Florida county

court located in Putnam County, Florida and had him personally served in South Carolina.

The lawsuit attempted to collect approximately $3,300 in unpaid attorney fees, allegedly owed by nonresident Lon Jr. from civil litigation in 1989 wherein Attorney Alan B. Fields had allegedly provided defense counsel legal services for Defendant Trustee Lon Jr.

Trustee Lon Jr. had paid the Florida law firm $4,000 prior to the non-jury "Equity Court" trial conducted on September 6, 1989, wherein Trustee Lon Jr. was sued by his mother, Leona Willoughby, because she was dissatisfied with the amount of money received from the **Marital Trust** established by her deceased husband, Lonnie E. Willoughby, Sr. (died in November 1986), using an inter vivos trust (known as living trust).

After the trial, Lon Jr. refused to pay the additional legal fees billed to him for Attorney Alan Fields trial legal services because Attorney Fields had failed to provide competent defense attorney services at trial.

Attorney Fields also failed to provide competent legal services after the trial regarding Trustee Lon Jr's desire to obtain a prompt rehearing regarding several "surprise complaints" that the circuit judge had allowed in at trial, over Attorney Fields' "objections".

Although Attorney Fields had more than twenty years experience as a Florida trial attorney, he failed to raise any objection at trial sustained by the judge. The trial judge summarily denied every objection raised by Attorney Fields during the day long trial.

Throughout the one day trial, it was obvious to Trustee Lon Jr. that the trial judge was biased and prejudiced against him - for reasons unknown to Lon Jr.

Over time, Lon Jr. came to understand that Attorneys Alan Fields, Tito Smith, and the trial judge acted

collusively to "allow" Attorney Tito Smith to systematically "ambush" Defendant Trustee Lon Jr. with five false surprise complaints during trial. Complex complaints about estate planning techniques and related federal estate tax calculation parameters had not been raised in Leona's **Complaint** against Trustee Lon Jr., and they had not been brought forth during discovery.

It was clear, or should have been clear, to Attorney Alan Fields and the trial judge that Defendant Trustee Lon Jr. was being severely prejudiced by testimony about the "surprise complaints" because Lon Jr. had not been noticed about those complaints before trial. It was clear that Lon Jr. had been denied a fair opportunity to prepare defenses for such complex technical complaint issues regarding trust administration actions taken in 1984 or 1985 or 1986 or 1987 - years before the trial conducted 9/6/1989.

Weeks later, the circuit court judge issued his final judgment, and the judgment ruled against Trustee Lon Jr. on four of the surprise complaints allowed in at trial over the "ineffective objections" of Attorney Fields. The final judgment removed Lon Jr. as trustee of his deceased father's trust estates (Marital Trust Estate and the Family Trust Estate) although no beneficiary of the Family Trust had raised a complaint against Trustee Lon Jr's administration of said trust.

Lon Jr. timely appealed the circuit court's judgment proceeding *pro se* because he was now without legal counsel. He subsequently contracted for legal services by Florida Attorney James Rose, Daytona Beach, Florida, to prepare the appeal briefs and conduct any other actions needed for the appeal.

Over a period of several months, Appellant Lon Jr. became increasingly aware of the fact that Attorney

James Rose was not providing competent appeal services. He filed an inadequate **Initial Brief** with the Fifth District Court of Appeal, Daytona Beach, Florida and said brief contained several serious errors of fact that would adversely affect Lon Jr's appeal. Appellant Lon Jr. quickly reported the errors to Attorney Rose and insisted that he promptly file an **Amended Initial Brief** to correct said errors. Attorney Rose delay responding to said request until it was too late to correct certain errors due to appellee response to the brief; the court therefore only allowed administrative changes to correct wording errors without changing substance of the brief.

Attorney Rose also filed an inadequate **Reply Brief**. Appellant Lon Jr. therefore had to request that an **Amended Reply Brief** be prepared. Attorney Rose refused to do so and Appellant Lon Jr. proceeded to have Attorney Rose removed from the appeal case.

Lon Jr. promptly filed an **Amended Reply Brief** proceeding *pro se*, in an effort to try to correct some of the serious damages done to his appeal by Attorney Roses' inadequate attorney services. At this point in time it was evident that Attorney Rose had deliberately sabotaged Lon Jr's appeal as a collusive action to "help" Attorney Tito Smith (appellee's attorney) win the appeal against the nonresident trustee.

Many months later, the appellate decision panel provided a **Per Curiam, Affirmed** decision, without providing any legal opinion for the "affirmed" decision.

As shown in **Rivera-Berrios v. Stefanos, 649 So.2d. 881 (Fla.App. 5th Dist. 1994)**, such an appeal decision effectively forecloses any opportunity to appeal to the Supreme Court of Florida. **Rivera-Berrios**, *supra*, shows that the Supreme Court of Florida has no

jurisdiction to review a **per curiam decision without opinion.**

Trustee Lon Jr. was left with only one appeal option; he could file a petition for a writ of certiorari with the Supreme Court of the United States.

Proceeding *pro se*, he laboriously worked on his petition *pro se*, had it published in proper booklet form, and then filed the required 40 copies of his petition, as required by the rules of the Supreme Court of the United States. The petition was filed timely on January 3, 1992 as **Case No. 91-1121.**

That petition provides substantial information about the Florida "Equity Court" litigation in 1989. The **Appendix** therein contains relevant quotes from selected pages of the trial transcript, showing all of Attorney Fields' "ineffective objections" during trial. The transcript quotes also prove conclusively that Attorney Tito Smith came to trial well prepared to **ambush** Trustee Lon Jr. with several "surprise complaint issues".

In opposition to the defendants' multiple motions for summary judgment, Plaintiff Lon Jr. produced a certified copy of the 267 page trial transcript as part of his evidence documents showing that a heinous conspiracy to perpetrate fraudulent litigation had been carried forward during the one day Florida "Equity Court" trial conducted on 9/6/89.

The trial transcript proves conclusively that Plaintiff Leona Willoughby and witness Larry Willoughby and witness Lonnie Stanely, Certified Public Accountant (CPA) respectively "cooperated" with Attorney Smith's heinous **ambush complaints scheme** by giving him the answers that he obviously wanted for his leading questions during their individual testimonies at trial.

Plaintiff Leona Willoughby provided false testimony about certain issues; Larry Willoughby also provided false testimony about certain issues; and CPA Lonnie Stanley also provided false testimony about **surprise complaint issues.** His testimony at trial also grossly underreported Leona's total income for 1987 and 1988, although he had personally completed Leona's federal income tax reports for said years. He reported Leona's total income as being many thousands of dollars less than her Federal tax returns had reported for the two years in question. See **Appendix G.**

Stanley's false "authoritative" testimony was then used by Attorney Tito Smith to make it appear that Trustee Lon Jr. had prevented Leona Willoughby from having an adequate income to maintain her conservative retirement lifestyle.

The truth is that Leona's cumulative total income for each of those years easily put her income in the top 15 % of all retired persons in America.

During trial, Defendant Trustee Lon Jr. reported to Defense Attorney Alan Fields some of the serious discrepancies in CPA Stanley's testimony, particularly about Leona's total income; however Attorney Fields failed to responsibly cross-examine CPA Stanley about Leona's gross income for 1987, 1988. Attorney Fields had already failed to obtain copies of Leona's Federal Tax Reports for 1987, 1988, as he obviously should have done during discovery since her primary complaint against Trustee Lon Jr. was an allegation that she needed more income from the Marital Trust. Defendant Trustee Lon Jr. had previously requested that Attorney Fields obtain copies of Leona's tax reports.

The transcript of the one day non-jury trial proves conclusively that Attorney Fields also failed to provide

any reasonable opportunity for Defendant Trustee Lon Jr. to provide rebuttal testimony about Leona's total income. Attorney Fields's deficient actions effectively "cooperated" with Attorney Smith's self-serving unethical scheme to falsely portray Trustee Lon Jr. as having deprived Marital Trust Beneficiary Leona Willoughby of an adequate income to fund her retirement lifestyle.

After reviewing the trial transcript several times, and after reviewing in detail the discovery documents obtained from Plaintiff Leona prior to trial, and after carefully reviewing the sequence of litigation actions recorded in the Civil Docket for said case, Trustee Lon Jr. began to understand that Attorney Alan Fields may have deliberately betrayed Lon Jr's legal interests.

In the review stated above, Lon Jr. discovered several serious mistakes in the litigation process, and he realized that each of the "mistakes" consistently benefited Plaintiff Leona and were consistently detrimental to Defendant Trustee Lon Jr's litigation interests. The 100% consistency in the pattern of mistakes was strong prima facie proof that a heinous conspiracy, between Attorneys Alan Fields, Tito Smith, and the "local" circuit judge, had perpetrated a fraudulent litigation scheme against the nonresident Defendant Trustee (Lon Jr.) for benefit of the "local" Marital Trust Beneficiary, Leona Willoughby (mother of Trustee Lon Jr.)

Petition for a Writ of Certiorari - Denied

Lon Jr's **Petition to the Supreme Court** was denied on March 2, 1992 and this left Lon Jr. without any further opportunity for appellate review of the extremely unfair and unethical Florida litigation process.

The severely frustrated and dismayed Lon Jr. subsequently learned that a **per curiam "affirmed" appeal decision without opinion** has essentially zero chance of being heard by the Supreme Court. Consequently, the hundreds of hours that he had spent preparing the petition (*pro se* legal research and the drafting and word processing of the 100+ page document) was a big waste of his very limited time for such activities, his diligent efforts, and his very limited financial resources.

Through extensive legal research, Lon Jr. eventually learned that the objections raised at trial by Attorney Alan Fields were mainly "window dressing" type objections that would fail to properly preserve for appellate review the issues objected to by Attorney Fields.

The trial transcript proves conclusively that none of Fields' objections to testimony about **surprise complaint issues** complied with the long established standard for objections at trial about issues not included in the pleadings. **Florida Rules of Civil Procedure, Rule 1.190(b) Amendments to Conform With the Evidence** states in part:

> **. . . . If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.**

Appendix G provides record of Fields' "objections"

Exhibit G proves conclusively that Attorney Fields made no objections that would show that Defendant Trustee Lon Jr. was being prejudiced by the judge allowing in evidence about **surprise complaint** issues that had <u>not</u> been presented in the Plaintiff Leona's **Complaint** against her eldest son.

REASONS FOR GRANTING THE PETITION

The ligation in the district court and appellate court below involved constitutional issues of great importance to the public at large. Plaintiff Lon Jr., proceeding *pro se*, was systematically denied due process of law as protected by **common law** and the **Constitution of the United States, Amend. 5, 7, and 14** (quoted on page 3 herein)

Plaintiff Lon Jr. was effectively denied his protected right to proceed *pro se* in a district court because the judges (magistrate and district judge) failed to provide a fair and impartial judicial forum for Lon Jr's complex litigation. The district judge also "allowed" summary judgment proceedings to deny Plaintiff Lon Jr. his protected right to a jury trial regarding a conspiracy complaint and money damage issues (jury trial issues protected by common law standards and **Amendment 7, Constitution of the United States**). Please see citations of relevant law provided **Appendix E, I, and J.**

Petitioner Lon Jr. has good reason to believe that the **AFFIRMED** judgment rendered on September 16, 1997 by the Eleventh Circuit three judge panel is an unfair, unethical, and fraudulent appeal judgment. The judgment is in direct conflict with the controlling legal standards cited in Lon Jr's appeal briefs regarding disposition of summary judgment proceedings.

Plaintiff's Evidence Opposing Summary Judgment

Plaintiff Lon Jr. introduced a substantial body of evidence to support his opposition to summary judgment proceedings in the federal district court below. In addition to providing a certified copy of the 267 page transcript for the Florida trial conducted on 9/6/89, Lon Jr. also introduced a copy of the Civil Docket for the Florida case, and also introduced copies of relevant pretrial motions that had been filed by opposing attorneys.

One of Lon Jr's affidavits showed that both attorneys had failed to schedule a motion hearing for their motions, as required by Florida civil procedure, and this was proven conclusively by statements recorded in the trial transcript showing that Circuit Judge Robert R. Perry denied all pending motions at the beginning of trial because they had not been timely scheduled for a motion hearing. See **Final Order** at **Appendix D.**

Lon Jr. filed six personal affidavits in opposition to summary judgment. He also filed affidavits from two South Carolina attorneys (**Marion Beacham, Senior Trust Officer**) (**Frank Warren, Estate Planning Specialist**. Both attorneys have special training and substantial experience in estate planning procedures and techniques using inter vivos trusts. Each attorney independently provided an affidavit style technical report about their analysis of the disputed estate planning issues raised against Trustee Lon Jr. at trial on 9/6/89.

From a review of the 267 page transcript, each attorney evaluated the testimony given about the surprise complex estate planning issues. Their independent affidavit evaluations showed that the Florida trial had been conducted in a manner that was unfair to Defendant Trustee Lon Jr.

Their detailed technical affidavits showed that Plaintiff Lon Jr's has legitimate complaints about the unfair manner in which the Florida litigation was conducted against him. It is important to observe that the District Judge below summarily ignored Marion Beacham's very important affidavit report. The Judge did not even mention said affidavit in his orders regarding summary judgment; See **Appendix B - B2, B3.**

Also see **APPENDIX G, H, I, K, AND L.** **Exhibit C** provides a copy of the **Initial Brief** that Appellant Lon Jr. filed in the Eleventh Circuit Court of Appeals.

In his order dated June 22, 1995, the district judge erroneously claimed that a reasonable jury could find no inference of a conspiracy from Lon Jr's evidence. Just the opposite is true; a reasonable jury could easily become convinced that a heinous conspiracy was at work in the Florida litigation (1989).

Pursuant to Florida controlling law, a civil conspiracy is proven by only a preponderance of evidence. Since this is a diversity of citizenship case, Florida law controls on this issue. See conspiracy cases cited and quoted in **Appendix J.**

Consequently, Plaintiff Lon Jr's is confident that his evidence was more than sufficient to overcome summary judgment proceedings regarding his conspiracy complaint.

In addition, Plaintiff Lon Jr. had eyewitness experiences and could give eyewitness testimony about how various defendants had cooperated with and had participated in Attorney Tito Smith's unfair and unethical "ambush complaints" scheme at trial on 9/6/89. Since none of the defendants had taken Lon Jr's deposition, it was imperative for the District judge to allow

Plaintiff Lon Jr. a fair and impartial opportunity to give his personal testimony about the conspiracy issue in a jury trial.

Consequently, Plaintiff Lon Jr. did show that there were material fact issues in dispute and summary judgment should not be granted to Tito Smith, Larry and Leona Willoughby. It was extremely unfair and unethical for the district judge to categorize Lon Jr's complaints against said defendants as "frivolous".

Pioneer Inv. Services v. Brunswick Associates, 113 S.Ct. 1489 (1993) shows that clients are held accountable for acts and omissions of their attorneys. In addition, the **Principal and Agent** rule is also applicable to this situation because Leona Willoughby is a beneficiary of the Marital Trust and Larry Willoughby was a co-trustee of the Marital Trust and the Family Trust and he was a beneficiary of the Family Trust. Therefore, Leona and Larry had special responsibilities to be fair and honest with Co-trustee Lon Jr. regarding his trust administration duties and responsibilities.

If Attorneys Tito Smith and Alan Fields conspired to perpetrate fraudulent litigation against Defendant Trustee Lon Jr., as Plaintiff Lon Jr. contends, and if Leona Willoughby and Larry Willoughby gave false testimony at trial in 1989 which helped Attorney Smith perpetrate a fraudulent litigation scheme against Defendant Trustee Lon Jr., then, under the complex relationships identified above, Leona and Larry can be held accountable to Lon Jr. for unfair, unethical litigation tactics by their agent, Tito Smith, in a trial about Lon Jr's trust administration duties and responsibilities.

Furthermore, legal briefs filed by Plaintiff Lon Jr. and Appellant Lon Jr. showed respectively that summary judgment is not a suitable method of adjudicating a

complex conspiracy complaint. See cases cited in **Appendix J.**

Since this was a diversity of citizenship case, Plaintiff Lon Jr's legal briefs also cited controlling Florida legal standards regarding adjudication of civil conspiracy cases. The cases cited showed that such complaints should be allowed to go to trial because it was necessary to have a jury decide the disputed fact issues in such cases. See cases cited in **Appendix J.**

The federal district judge and the appellate panel summarily ignored the controlling legal standards cited and quoted in Lon Jr's respective legal briefs regarding his right to a jury trial for his complaint about a civil conspiracy. The respective judgments were in conflict with the controlling legal standards cited and quoted by Lon Jr., and they were also in conflict with **United States v. Torres, 720 F.2d 1506 (11th Cir. 1983), United States v. Barrow, 363 F.2d 62 (3rd Cir. 1966),** and **Fisher v. Shamburg, 624 F.2d 156 (10th Cir. 1980).** Also see **Appendix J** at page 112a.

These cases collectively show that a conspiracy can be proven by indirect or circumstantial evidence and the existence of a conspiracy may be inferred from evidence of related facts and circumstances from which the evidence appears. This situation applies to both civil and criminal conspiracies. These cases show that it is common knowledge that direct evidence of a conspiracy is rarely available, and the existence of a conspiracy must usually be inferred from the circumstances involving the participants.

Consequently, it is clear to Petitioner Lon Jr. that the federal magistrate judge and the district judge and the appellate panel of judges unfairly and unethically denied Plaintiff Lon Jr. his protected right to present his

precedent setting conspiracy complaints in a jury trial. It is very clear to Lon Jr. that a series of judges in the Florida courts and the federal judges identified above acted in collusion to deny Lon Jr. any fair and impartial opportunity to present his conspiracy complaints to a jury. Therefore, Lon Jr's constitutionally protected and secured rights, pursuant to the United States Constitution, Amendments 5, 7, and 14 were severely violated.

In addition, it has been shown herein that the "unpublished" opinion of the Eleventh Circuit Court of Appeals is in direct conflict with its own ruling cited above regarding a conspiracy complaint, and in conflict with at least two other circuits. See cases cited in **Appendix J**. Therefore, the Supreme Court should exercise its supervisory powers to more fully establish the national legal standards needed to adjudicate civil conspiracy cases in a more fair and equitable manner.

This case shows convincingly that the district judge and the appellate panel of judges set the threshold evidence standard so high that the only way that Plaintiff Lon Jr. could have satisfied them was to have a signed confession from one of the conspirators.

Said appellate judgment makes a mockery of the sacred judicial precepts of searching for truth with fairness and impartiality, providing a jury trial for jury trial issues, and providing substantial justice for all issues adjudicated in the trial court. The district court summary judgment proceedings below show how easy it is for the judge to manipulate the case away from a jury trial even though it is clear that the case should have gone to the jury.

The legal issues involved in this exceptionally important case are clearly of great national public importance. This well documented case provides

conclusive hard evidence that individual rights to "meaningful access to the courts", both state and federal, is being summarily denied litigants who proceed *pro se*, in spite of the landmark decision provided by this Court more than 27 years ago in **Faretta, v. California, 95 S.Ct. 2525, 422 U.S. 806, 45 L.Ed.2d 562 (1975)** - regarding protected right of litigants to proceed *pro se*.

The voluminous 14 volume record for the district court litigation below provides hard evidence that a series of Florida trial judges grossly abused Defendant Lon Jr's federally protected rights to proceed *pro se* in the Florida courts and they used those violations of Lon Jr's protected rights to help Defendant (attorney) Alan Fields obstruct the cause of justice in the district court litigation for his benefit, and for benefit to Defendant Rose and Smith (both are Florida attorneys).

On several occasions, Plaintiff Lon Jr. reported unfair and unethical litigation actions to the magistrate judge or the district judge; both judges refused to take any responsible actions regarding the plaintiff's reports. Several of those reports were under oath and notary seal.

Lon Jr. also filed eleven detailed motions moving for **Rule 11** sanctions against opposing legal counsels (three separate attorneys involved) for their respective violations of **Rule 11 of the Federal Rules of Civil Procedure.**

Neither the magistrate judge nor the district judge took any action whatsoever to impose even modest sanctions that might terminate the abusive and unethical litigation tactics being used by respective attorneys against Plaintiff Lon Jr., proceeding *pro se*.

Both judges refused to issue even a word of caution to opposing counsels about their unfair and unethical litigation tactics against the *pro se* litigant.

The records for the district court litigation provides substantial proof that individual litigants, proceeding *pro se*, have been effectively disenfranchised from civil litigation courts, both federal and state courts, by effectively being "forced" into a status of total dependence upon trial attorney services if the litigants are to have any realistic hope of obtaining meaningful access to the courts (state or federal courts).

In other words, the courts have become the personal playground of trial judges and trial attorneys; non-attorney *pro se* litigant will generally be abused, harassed, intimidated, and severely persecuted by the "collusive" actions of the judge and opposing attorney if the litigant insists on exercising his "protected right" to proceed *pro se*. There "collective actions are calculated to make the litigant "sorry" that he attempted exercise his/her protected right to proceed *pro se*.

Lon Jr's eight years of ongoing *pro se* litigation in the Florida courts (with nine appeals already and more waiting in the wings for the proper time to appeal) has convinced Lon Jr. that the Florida courts are operated in an extremely self-serving manner that is essentially a corrupt "extortion racket" operated for the primary benefit of "local" trial attorneys in each g[illegible]raphic "judicial territory".

The extremely unfair federal district court litigation below, and the subsequent unfair appeal decision of the Eleventh Circuit, show that self-serving judicial corruption extends into these courts as well.

Lon Jr's extensive *pro se* litigation experiences have repeatedly encountered situations where Florida judges, the federal magistrate judge below, the district judge below, and now the appellate panel below, used the "rules of civil or appellate procedure" to manipulate

the litigation so the ultimate outcome was most beneficial to members of the legal profession in general, or selected members thereof, without providing responsible fair and impartial consideration to the dispensation of substantial justice for the litigants.

This very serious complaint is demonstrated convincingly with the unfair actions of the district court judge identified herein that were then **affirmed** on appeal after allegedly receiving **de nova review** by a three judge appellate panel in the Eleventh Circuit Court of Appeals.

Lon Jr's legal briefs in the district court repeatedly showed that an extreme travesty of justice was occurring in the federal case, but none of the judges involved (district level or appellate level) showed any concern whatsoever for the extremely unfair manner in which the litigation was conducted in the trial court.

The record shows that none of the judges took any responsible actions to call for a responsible investigation of Lon Jr's very serious complaints about the unfair and unethical litigation tactics used against him by various "officers of the court".

It appears that such actions are taken to solidify the financial and political gains of members of the legal profession in general. In effect, "cooperative judges" have enabled trial attorneys all across America to effectively enslave all citizens and other residents of the United States of America and force them into a subservient position to an extremely bureaucratic self-serving (corrupt) judicial system.

Lon Jr. has found that judicial officers are usually more interested in playing bureaucratic gamesmanship with the rules of procedure than they are in making a responsible search for truth and justice.

Lon Jr's exceptionally well documented case shows convincingly that Florida state court judges can execute fraudulent orders and judgments that will subsequently be "honored" by a federal district court judge although the plaintiff (Lon Jr.) has made a strong prima facie showing that the disputed order or judgment was executed in an unfair and unethical manner.

The district court records prove conclusively that the federal district court judge repeatedly refused to take any responsible action to initiate an investigation of Plaintiff Lon Jr's valid affidavit style complaints about the unfair and unethical manner in which a series of Florida judges had acted in collusion with Attorney Alan Fields to issue orders calculated to obstruct justice in the federal district court litigation for the direct and proximate benefit of Defendant Attorney Alan Fields (and Defendant Attorneys Tito Smith, James Rose).

One of those situations involved the circuit court's order dismissing with prejudice Lon Jr's compulsory counterclaims as an alleged discovery sanction. The order was drafted in such a manner that Defendant Lon Jr. could not immediately appeal the order; however, the federal district judge allowed Defendant Fields to use the non-final dismissal order as a *res judicata* basis for summary judgment dismissal of Lon Jr's complaints against Defendant Attorney Alan Fields. That summary judgment action was in conflict with the doctrine that the judgment must be final in nature and not subject to change. See **Commissioner v. Sunnen, 333 US 591, 92 L.Ed. 898, 68 S.Ct. 715.**

This case also shows that a federal district court or a federal appellate court can easily operate in a corrupt, self-serving manner regarding any issues that may reflect negatively upon any judge or may reflect negatively upon

any member of the bar if the case is allowed to the jury.

This exceptionally well documented case proves conclusively that it is very easy for self-serving judicial officers to deny any litigant (especially one proceeding *pro se*) a fair and impartial judicial forum any time they choose to do so because there simply is no effective accountability established within the judicial system to responsibly and reliably minimize unfair, unethical self-serving judicial orders or judgments.

It is now clear to Petitioner Lon Jr. that the appellate panel of judges simply pretended to provide a **de nova review** of the voluminous 14 volumes of records from the district trial court, and they issued an unfair and unethical appeal decision which attempted to further coverup the unfair and unethical self-serving litigation actions taken against non-resident Plaintiff Lon Jr. in the district court below.

For the reasons shown herein, the AFFIRMED decision rendered by the Eleventh Circuit appellate panel departed so far from the accepted and usual course of fair and impartial judicial proceedings involving summary judgment standards, and also sanctioned such an unfair and unethical departure from said judicial standards by the district court below, as to cry out for a responsible exercise of the supervisory powers of the Supreme Court of the United States.

It is clear that this high court needs to establish a badly needed precedent setting case showing that a conspiracy between opposing attorneys to perpetrate fraudulent litigation against one of the litigants is such a heinous situation that it will not be tolerated if it is reported adequately to this high court.

It is clear that the district judge substituted his own personal self-serving judgment for that of a jury regarding common law jury trial issues (money damage issues), and thereby denied Plaintiff Lon Jr. any opportunity to present his case before a jury. This case shows how easy it is for a district judge to undermine the public's vital common law right to jury trials on money damage issues whenever an arguable case can be made in facts and law.

The only legal remedy available to Petitioner Lon Jr., to overcome this extreme travesty of justice, and establish a badly needed precedent setting case regarding a heinous conspiracy between opposing attorneys to perpetrate fraudulent litigation, is for this Supreme Court to issue a writ of certiorari.

CONCLUSION

WHEREFORE, for the reasons stated herein, and in the interest of supporting and preserving the noble judicial goals and ideals of fairness, impartiality, truth, and substantial justice, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Lonnie E. Willoughby, Jr., Petitioner *pro se*
c/o Post Office Box 127
Mauldin, S.C. 29662-0127
Telephone/Telefax: (864) 288-8924

INDEX TO APPENDICES

Appendix	Subject		Page
A	Eleventh Circuit Documents		1-6
	A1	JUDGMENT, Affirmed	1,2
	A2	Order denying rehearing	3,4
	A3	Opinion, unreported	5,6
B	District Court Documents		7
	B1	Final Judgment	7
	B2	Final Order	8
	B3	Summary Judgmt 06/22/95	14
C	Appellant's Initial Brief		19-66
D	Florida Circuit Court's Final Judgment		67
E	U.S. Constitution		72
	Article 4, Section 1, 2 Amendment 1 Amendment 5 Amendment 7 Amendment 14, Section 1		
F	Florida Statutes (Trust Admin.)		74
	Chapter 737 (selected sections) Chapter 738 (selected sections)		

INDEX TO APPENDICES

Appendix	Subject	Page
G	Transcript Statements, 9/6/89	77-101
H	Parole Evidence Standards	102
I	Due Process Citations	105
	I1 Supreme Court Cases	105-108
	I2 Florida Cases	109-111
J	Conspiracy - Legal Standards	112
K	Trust Administration Citations	116
L	Marion Beacham's Reports (selected paragraphs)	121
	L1 August 22, 1989 Affidavit	121
	L2 October 20, 1989 Affidavit	127
M	Relevant Criminal Law Statutes	136
	18 U.S.C.A # 241	136
	18 U.S.C.A. # 1341	139
	Fla. Stat. 839.13	140
	Fla. Stat. 839.25	142
	Corruption defined	132

Appendix A

United States Court of Appeals
For the Eleventh Circuit

No. 962183
Non-Argument Calendar

District Court No. 92-1316-CIV-J-10

**FILED, U.S. COURT OF APPEALS,
ELEVENTH CIRCUIT SEP 16, 1995
MIGUEL J. CORTEZ, CLERK**

LONNIE E. WILLOUGHBY, JR.,
Plaintiff-Appellant,
JANIE R. WILLOUGHBY,
Plaintiff,
versus
ALAN B. FIELDS, JR.; JAMES L. ROSE; TITO S. SMITH; LARRY M. WILLOUGHBY; LEONA S. WILLOUGHBY,
Defendants-Appellees,

CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, in and for Putnam County, Florida,
Defendant.

Appeal from the United States District Court
for the Middle District of Florida

Before TJOFLAT, ANDERSON and BLACK, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 343;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: September 16, 1997
For the Court: Miguel J. Cortez, Clerk

By: s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 11/12/97

United States Court of Appeals
For the Eleventh Circuit

No. 962183
Non-Argument Calendar

District Court No. 92-1316-CIV-J-10

**FILED, U.S. COURT OF APPEALS,
ELEVENTH CIRCUIT OCT 31 1995
MIGUEL J. CORTEZ, CLERK**

LONNIE E. WILLOUGHBY, JR.,
Plaintiff-Appellant,
JANIE R. WILLOUGHBY,
Plaintiff,
versus
ALAN B. FIELDS, JR.; JAMES L. ROSE; TITO S. SMITH; LARRY M. WILLOUGHBY; LEONA S. WILLOUGHBY,
Defendants-Appellees,

CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, in and for Putnam County, Florida,
Defendant.

On Appeal from the United States District Court
for the Middle District of Florida

Before TJOFLAT, ANDERSON and BLACK, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant LONNIE E. WILLOUGHBY is denied.

ENTERED FOR THE COURT.

s/ unreadable signature
UNITED STATES CIRCUIT JUDGE ORD-41

United States Court of Appeals
For the Eleventh Circuit

No. 962183
Non-Argument Calendar

District Court No. 92-1316-CIV-J-10

**FILED, U.S. COURT OF APPEALS,
ELEVENTH CIRCUIT SEP 16 1995
MIGUEL J. CORTEZ, CLERK**

LONNIE E. WILLOUGHBY, JR.,
Plaintiff-Appellant,
JANIE R. WILLOUGHBY,
Plaintiff,

versus

ALAN B. FIELDS, JR.; JAMES L. ROSE; TITO S. SMITH; LARRY M. WILLOUGHBY; LEONA S. WILLOUGHBY,
Defendants-Appellees,

CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, in and for Putnam County, Florida,
Defendant.

Appeal from the United States District Court
for the Middle District of Florida

Before TJOFLAT, ANDERSON and BLACK, Circuit Judges.

PER CURIAM:

On December 12, 1995, the district court entered a final judgment in this action. The judgment adjudicated all of appellant's claims against him with the exception of appellant's claims against James Rose, which were dismissed without prejudice. Appellant thereafter moved the court for relief pursuant to Fed. R. Civ. P. 59(e). The court denied his motion and appellant took this appeal.

In this appeal, appellant raises no issue respecting the district court's denial of his Rule 59(e) notion. Rather, his claims of error focus on the matters that district court addressed and disposed of in its dispositive order of December 12, 1995. We find no error in any of the district court's rulings and, therefore, affirm its judgment.

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE District OF FLORIDA

Lonnie E. Willoughby Jr.,
Plaintiff,

JUDGMENT IN A CIVIL CASE

v.
Alan E. Fields Jr., et al.,
Defendant.

CASE NUMBER: 92-1316-Civ--J-10

__ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_x_ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits as to defendants Alan Fields, Tito Smith, Larry Willoughby, and Leona Willoughby, and that said defendants recover of plaintiff their costs of action; that the claims against defendant James Rose are dismissed without prejudice.

DEE 12 1995 DAVID L. EDWARDS
Date

s/ Sandra P. Wallen

( ) COPIES DISTRIBUTED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LONNIE E. WILLOUGHBY, JR.,
Plaintiff,

vs. CASE NO. 92-1316-CIV-J-10

ALAN B. FIELDS, JR.,
JAMES L. ROSE, etc., et al.,
Defendants.

_____/

ORDER

Many motions are pending before the Court: (1) The Plaintiff has moved (Doc. 324) for reconsideration of this Court's order (Doe. 319) denying his motion for a temporary restraining order enjoining the state court system from enforcing the indirect criminal contempt entered against him; (2) Defendant Fields has moved (Doc. 298) for summary judgment, to which the Plaintiff has responded (Doc. 306), along with his "Seventh Affidavit~ (Doc. 307); (3) the Plaintiff has moved for reconsideration (Doc. 301) of this Court's Order (Doc. 297) dismissing all claims against Defendants Tito Smith, and Larry and Leona Willoughby; (4) the Plaintiff has moved (Doc. 309) to amend his pleadings, to reopen discovery, to continue the pretrial conference and trial, to stay motions for summary judgment, and for the Court to initiate criminal investigations into the state court system; (5) Defendant Fields has moved (Doc. 311) for injunctive relief; (6) Defendants Fields and Rose have moved (Doc. 315) for involuntary dismissal; and (7) the Plaintiff has moved for sanctions against the Defendants (Docs. 327, 328, 332, 334 and 336) and to strike (Doc.333) a response to a motion for sanctions.

Reconsideration of TRO Denial

The power of this Court to become involved in state court proceedings is extremely limited. Ordinarily, a United States District Court lacks jurisdiction to review a state court judgment, even if the judgment was clearly violative of the United States Constitution. District of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303, 460 U.S. 462, 75 L.Ed.2d 206 (1983). An aggrieved party must instead appeal the judgment through the state court system, which may then be reviewed by the United States Supreme Court. Id. Further, the federal anti-injunction statute precludes a federal court from enjoining a proceeding in the state courts for all but a few limited cases. 28 U.S.C. # 2283. As the Plaintiff notes, however, the federal district courts may enjoin a pending state court prosecution in exceptional circumstances. Mitchum v. Foster, 407 U.S. 255, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972).

The Court is not convinced that this is such a case, despite the Plaintiff's allegations of bad faith and harassment by state court officials. Certainly this has been a frustrating case for the parties; however, the Court is not of the belief that this case warrants exceptional remedies. Accordingly, the motion for reconsideration is due to be denied.

The Plaintiff has litigated this suit since August of 1992, in which the only remaining claims are for legal malpractice against Defendants Fields and Rose. The law firm of Dowda and Fields, Chartered, (hereafter "The Firm") initiated a lawsuit in the Florida state courts, also in August of 1992, against the Plaintiff, involving its representation of the Plaintiff in the underlying action from which the current legal malpractice claims arise. The Plaintiff counterclaimed in the state court action, alleging malpractice by Defendant Fields on behalf of The Firm.

During the course of that litigation, the Plaintiff was enjoined from proceeding pro se, which was affirmed by the Florida Fifth District Court of Appeal (5th DCA). The Plaintiff thereafter refused to appear for deposition, and was warned by order of the court that his pleadings would be stricken if he did not appear. When the Plaintiff did not appear, the state court dismissed his pleadings and counterclaims (one of which was his legal malpractice claim), pursuant to Fla.R.Civ.P. 1.420(b). **The Plaintiff appealed, and the 5th DCA affirmed the dismissal.** (emphasis added by petitioner) Defendant Fields has now moved for summary judgment on the claim, asserting res judicata.

Summary judgment is appropriate only when the Court is satisfied "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In making this determination, the Court must "view the evidence in a light most favorable to the nonmoving party.
Samples on Behalf of Samples v. Atlanta, 846 F.2d 1328, 1330 (llth Cir. 1988). The moving party has the initial burden of establishing the absence of a genuine issue of fact. Celotex Corp., v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Next, the "nonmoving party . . . bears the burden of coming forward with sufficient evidence of every element that he or she must prove. Rollins v. Techsouth, Inc., 833 F.2d 1525, 1528 (llth Cir. 1987). To that end, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex, 477 U.S. at 324, 106 S.Ct. at 2553.

The Court has reviewed the Plaintiff's "Seventh Affidavit" at length, in which he claims that he dismissed the legal malpractice counterclaim via letter

to Defendant Fields prior to the court's dismissal. However, the court must order even the voluntary dismissal of a counterclaim, and any such letter would not have any legal effect. That is, pursuant to Fla.R.Civ.P. 1.420(a), only the Plaintiff may dismiss a claim without leave of court.

The dismissal of the legal malpractice claim against Defendant Fields by the state court operated as an adjudication on the merits, under the express terms of Fla.R.Civ.P. 1.420(b). See also, Crews v. Dobson, 177 So. 2d 202, 205 (Fla. 1965) (dismissals for failure to follow court orders shall constitute adjudication on the merits). Accordingly, the legal malpractice claim is barred by res judicata and summary judgment is due to be granted as to Defendant Fields.

As I stated in an Order dated August 31, 1995:

> "During the course of the pretrial conference, in light of the Plaintiff~s failure to appear and the fact that the reasons underlying his absence are not likely to be remedied in the near future, the Court removed the case from its trial calendar. as the Plaintiff is proceeding pro se, and his appearance is necessary to the prosecution of the action.

---

[1]Plaintiff states that he is unable to enter the state of Florida because of "indirect criminal contempts" entered against him by the County Court of Putnam County, Florida, with accompanying sentences totaling 179 days.

"In view of these circumstances, the Court will reserve ruling on the pending motions until the Plaintiff has had ten (10) days to respond to the motion for involuntary dismissal filed by the Defendants."

The Plaintiff has now filed a response (Doc. 323), which merely revisits the indirect criminal contempt entered by the state court, and again requests that this Court set that aside. As stated previously, I have neither the authority nor the inclination to do so. As the Plaintiff has not suggested any remedy to his inability to prosecute this action, I am obliged to grant the Defendants' motion for involuntary dismissal for failure to prosecute. I have considered abating the case as a lesser sanction; however, merely abating the action and leaving the claims of professional malpractice pending against the Defendants would only punish the Defendants for the Plaintiff's recalcitrance.

Other Motions

The Plaintiff has also moved (Doc. 309) to amend his pleadings, to reopen discovery, to continue the pretrial conference and trial, to stay decision on summary judgment, to initiate criminal proceedings (Doc. 309) against judges in the state court, to strike (Doc. 333), and for sanctions (Docs. 327, 328, 332, 334 and 336). Finally, Defendant Fields has also moved (Doc. 315) to enjoin the Plaintiff from filing any further pleadings without leave of court. All of these are due to be denied.

Accordingly, upon due consideration, it is ordered that:

(1) the Plaintiff's motion for reconsideration (Doc. 324) is DENIED;

(2) Defendant Fields' motion for summary judgment (Doc. 298) is GRANTED;

(3) the Plaintiff~s motion for reconsideration (Doc. 301) is DENIED;

(4) the Plaintiff's motions (Doc. 309) to amend, reopen discovery, stay decision on summary judgment, initiate criminal proceedings and continue are DENIED;

(5) Defendant Fields' motion (Doc. 311) for injunctive relief is DENIED;

(6) the Defendants' motion (Doc. 315) for involuntary dismissal is GRANTED; and

(7) the Plaintiff's motions for sanctions (Docs. 327, 328, 332, 334 and 336) and to strike (Doc. 333) are DENIED.

The Clerk is directed to enter judgment for Defendants Alan Fields, Tito Smith, Larry Willoughby, and Leona Willoughby and against the Plaintiff, and to dismiss the claims against Defendant Rose without prejudice for failure to prosecute.

IT IS SO ORDERED.

DONE and ORDERED at Jacksonville, Florida, this 12 th day of December, 1995.

s/ Wm. Terrell Hodges

United States District Judge

Copy to counsel of record

Copy to Dave Pellieer

UNITED STATED DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LONNIE E. WILLOUGHBY, JR.
Plaintiff,

-vs- CASE NO. 92-1316-CIV-J-10

ALAN B. FIELDS, JR.
JAMES L. ROSE, TITO SMITH
LARRY M. WILLOUGHBY and
LEONA S. WILLOUGHBY,
Defendants. /

ORDER

On March 31, 1995, the Court entered an Order on Defendants' motions for summary judgment determining that the Plaintiff's responses to the motions did not demonstrate a genuine issue for trial, explaining to the Plaintiff his obligations under Rule 56, Fed.R.Civ.P., and directing the Plaintiff to file supplemental responses to the motions within twenty days. In response, Plaintiff submitted two affidavits signed by an attorney in South Carolina, Wm. Franklin Warren, III, opining that the Defendants Rose and Fields committed malpractice in their separate representations of the Plaintiff. As a result of the affidavits, the Court entered an Order (Doc. 285) concluding that genuine issues of fact existed on the legal malpractice claims.

However, the Court also noted that Plaintiff still had not submitted any evidence sufficient to demonstrate a genuine issue of fact as to the existence of the alleged "fraudulent litigation scheme" by Fields, Rose, Smith and Leona and Larry Willoughby. However, because the Plaintiff had requested yet another continuance of time to respond, the Court allowed an additional twenty days for him to submit evidence demonstrating a genuine issue for trial. The

Court also specifically informed the Plaintiff that "any additional motions he may file, such as motions for reconsideration or for continuance, will not toll this twenty day deadline." Plaintiff has filed a motion (Doc. 290) for reconsideration of the Court's Order and an amended motion for reconsideration (Doc. 294), and he also complied with the Order's directions by filing his fifth and sixth affidavits (Docs. 291 & 292) in opposition to summary judgment. The motion for reconsideration is denied, and the Court will now proceed to resolving the Defendants' motions for summary judgment to the extent they address the Plaintiff's allegations of a fraudulent litigation scheme. The crux of the Plaintiff's claim is that, in the underlying state court action, his attorneys, the opposing parties and their attorney all conspired to defraud the Plaintiff of his status as a trustee of the family trusts. The Court has reviewed all of the Plaintiff's numerous briefs, affidavits, and other evidentiary submissions and none of these extensive filings demonstrates that genuine issues of fact existed for trial regarding the alleged fraud or an agreement between the Defendants to commit the alleged fraud. See Ambrister v. Roland Int'l Corp., 667 F.Supp. 802, 809 (M.D. Fla. 1987). The alleged wrong suffered by the Plaintiff is that he was removed as a co-trustee [1] in the underlying state court litigation. The remedy for this wrong, if proven, can be obtained through the legal malpractice claims that he has filed against his attorneys. [2] The Plaintiff's attempt to characterize his attorneys actions as a willful fraud, and to use this allegation to create a conspiracy to commit fraud claim against his mother and brother and Defendant

[1] Plaintiff's brother was also removed as a trustee and an accountant was appointed in their stead.

[2] And again, the Court has determined that genuine issues of fact exist concerning these claims.

Smith, is wholly unsupported by the evidence and clearly frivolous. The Plaintiff argues correctly that he has submitted extensive evidence in this case; however, the evidence does not create any inference of a fraudulent litigation scheme and reasonable jurors could not conclude, based on this evidence, that a fraudulent litigation scheme existed. In other words, there are no genuine issues for trial and summary judgment will be entered on this claim.

The Plaintiff also argues, on page 16 of his fifth affidavit, that the Defendants' motions for summary judgment did not address his intentional interference with business relationships claim or his intentional infliction of emotional distress claim. Therefore, the Plaintiff concludes that the burden did not shift the burden to him under Rule 56, Fed.R.Civ.P., on these claims and that these claims remain viable for trial. However, by the Plaintiff's own admission at page 16 of his fifth affidavit, the Defendants allegedly committed these two torts "by conducting an extremely fraudulent litigation scheme to accomplish those objectives." Thus, it is apparent that these claims are based upon the Plaintiff's factual allegations of a conspiracy to commit fraud. Again, there are no genuine issues of fact concerning these allegations, and accordingly, the separate legal theories of intentional interference with business relationships and intentional infliction of emotional distress will be dismissed because they are dependent upon the same baseless allegations of a fraudulent conspiracy.

The Plaintiff also seeks once again, to reopen discovery. This request is denied. However, the Defendants note in opposition to this request that they oppose reopening discovery and will not seek to depose the Plaintiff's expert, Mr. Warren, because they intend to object to his testimony because he was not disclosed as a witness during discovery. Also on the subject of Mr. Warren's testimony, the Plaintiff

states, without making any specific request for relief, that he may seek to submit Mr. Warren's affidavit at trial to avoid imposing a burden on the expert by requiring him to testify in Jacksonville.

The Defendants are advised that the Court is unlikely to exclude Mr. Warren's testimony. Over two months remain before the trial of this action and Defendants have more than sufficient notice of the Plaintiff's expert. The Defendants can file a motion to reopen discovery for the limited purpose of deposing Mr. Warren (which, of course, would also permit the Plaintiff to acquire Mr. Warren's testimony in the form of a deposition), or Mr. Warren may be deposed if the Plaintiff and the Defendants mutually agree to allow his deposition outside the discovery period. [3] Further, the Plaintiff is advised that the Court is unlikely to allow the submission of the expert's opinions by affidavit. See Rules 801-806, Fed.R.Evid.

Finally, Defendant Fields has filed a motion (Doc. 287) for leave to file a supplemental motion for summary judgment. This proposed motion would argue that events in a state court action for fees, occurring subsequent to any previously filed motions, have now operated as an adjudication on the merits in favor of Fields and against the Plaintiff on the malpractice claim raised in this case. Plaintiff opposes the filing of this additional motion (Doc. 296). The motion for leave to file a supplemental motion for summary judgment is granted, and the Defendant is directed to file his motion within ten (10) days of this Order. Plaintiff is directed to file his response to the

---

[3]The parties are advised, however, that the Court will not resolve any disputes arising during the course of discovery conducted, by mutual agreement, outside the time for discovery allotted by the Court. For the Court to resolve any potential disputes, the parties must obtain an order extending the discovery deadline

motion within twenty (20) days of its service, and the Plaintiff is notified that any motions for continuance, for extension of time, for reconsideration, or for any other relief will not toll his time to respond to the supplemental motion for summary judgment. The Plaintiff is further reminded to refer to the Court's previous Order of March 31, 1995, explaining to him his obligations under Rule 56, Fed.R.Civ.P.

Accordingly, upon due consideration, it is ordered that:

(1) Plaintiff's motion (Doc. 290) and amended motion (Doc. 294) for reconsideration are DENIED;

(2) Defendant Fields motion (Doc. 287) for leave to file supplemental motion for summary judgment is GRANTED and Defendant is directed to file the motion within ten (10) days of this Order. Plaintiff shall respond within twenty (20) days of service of the motion, and this response time will not be tolled by any subsequent filings by Plaintiff; and

(3) Defendants' motions for summary judgment (Docs. 158, 181 & 187) are GRANTED to the extent they address Plaintiff's "fraudulent litigation scheme" claim and Plaintiff's claims for intentional interference with business relationships and intentional infliction of emotional distress (which are dependent on the existence of a fraudulent litigation scheme) are also dismissed. This disposes of all of the Plaintiff's claims against Defendants Smith, Larry Willoughby and Leona Willoughby, but, in order to avoid piecemeal appeals, judgment will be withheld until the resolution of all claims against all parties to this action. See Rule 54(b), Fed.R.Civ.P.

IT IS SO ORDERED.

DONE AND ORDERED at Jacksonville, Florida, this 22nd day of June, 1995.

s/ Wm. Terrell Hodges

UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
CASE NO. 96-2183

Lonnie E. Willoughby, Jr.,
Plaintiff/Appellant,

v.

Alan B. Fields, Jr., James L. Rose,
Tito S. Smith, Larry M. Willoughby,
and Leona S. Willoughby
Defendants/Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE MIDDLE
DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
CASE NO. 92-01316 CIV-J-10

INITIAL BRIEF OF APPELLANT

Lonnie E. Willoughby, Jr., pro se
307 Poplar Lane
c/o P. O. Box 127
Mauldin, SC 29662-0127/TDC
Phone/Fax: (864) 288 - 8924

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The Plaintiff/Appellant, Lonnie E. Willoughby, Jr., hereinafter Lon Jr., certifies the following listed persons may have an interest in the outcome of this case or are otherwise required to be listed by the rules. These representations are made in order that judges of this court may evaluate possible disqualification or recusal. Appellant Lon Jr. is not aware of any corporation with publicly traded stock that may have an interest in this appeal.

U.S. District Judge: Wm. Terrell Hodges
U.S. Magistrate Judge: John E. Steele

Appellant/Plaintiff: Lonnie E. Willoughby, Jr. proceeding *pro se*

Appellee/Defendant: Alan B. Fields, Jr., a Florida attorney proceeding *pro se*

Appellee/Defendant: James L. Rose, represented by Attorney Robert A. Cole

Appellees/Defendants: Tito S. Smith, Larry M. Willoughby, Leona S. Willoughby represented by attorneys Victor M. Halbach, Jr., Susan Smith Erdelyi, and Alan K. Ragan (same law firm)

STATEMENT REGARDING ORAL ARGUMENT

Appellant Lonnie E. Willoughby, Jr., hereinafter Lon Jr., respectfully waives oral argument to the extent the defendants and this court are agreeable to dispense with oral argument.

Appellant Lon Jr. believes substantial factual evidence is well documented in the voluminous 14 volume "record on appeal" to support the appellant's arguments on appeal and the relevant legal issues can be presented clearly and convincingly in the litigant's respective legal briefs. Therefore, Appellant Lon Jr. believes that a fair, impartial, and responsible appellate decisional process will not be significantly aided by oral argument.

This appeal will show that extremely unfair and unethical judicial actions were taken against nonresident Lonnie E. Willoughby, Jr. by numerous officers of Florida court(s) in a conspiratorial effort to obstruct justice in the federal district court litigation below (**Case No. 01316-CIV-J-10**), for the direct and proximate benefit of Defendant Alan B. Fields, Jr. (a Florida attorney) and two other defendants who are Florida attorneys (James L. Rose and Tito S. Smith).

This appeal will show that various officers of the federal district court below systematically "cooperated" with the unfair and unethical efforts of certain Florida judicial officers, and some of the defendants in the case below, to systematically obstruct justice in the case wherever possible. Consequently, the trial court litigation below consumed far too much time and caused far too much expense for the litigants.

Oral argument would cause additional travel expenses and other expenses (loss of work time) for nonresident Appellant Lon Jr. and would cause additional travel expenses and legal counsel expenses for the five nonresident defendants and their five Florida attorneys.

Appellant Lon Jr. believes the legal issues before this appellate court can be reviewed fairly and responsibly without the extra expenses, and other associated burdens, that would be required if the appellant (proceeding *pro se*) and five nonresident Florida attorneys had to travel to Atlanta, Georgia to participate in oral argument (five defendants/appellees). Consequently, in the interest of judicial economy for the court and all litigants, oral argument should be avoided if possible.

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this legal brief is 14 point Times Roman (US).

Note: 12 point Times Roman in this exhibit

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT i

STATEMENT REGARDING ORAL ARGUMENT ..... ii-iii

CERTIFICATE OF TYPE SIZE AND STYLE iii

TABLE OF CONTENTS ..... iv-vi

TABLE OF CITATIONS vii

STATEMENT OF JURISDICTION vii

PREFACE: PARTIES AND ABBREVIATIONS ix

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 2-13

I. COURSE OF PROCEEDINGS AND DISPOSITION BELOW 2-13

II. STATEMENT OF THE FACTS 2-13

III. STANDARD OF REVIEW 10

SUMMARY OF THE ARGUMENT 11-13

ARGUMENT 13-39

I. THE TRIAL JUDGE ABUSED HIS JUDICIAL DISCRETION WHEN HE REFUSED TO ISSUE TEMPORARY RESTRAINING ORDER (TRO) AND THEN CONDUCT HEARING REGARDING PLAINTIFF'S MOTION FOR INJUNCTIVE ORDER 13-29

II. THE TRIAL JUDGE ERRED WHEN HE GRANTED *DEFENDANT'S MOTION FOR INVOLUNTARY DISMISSAL* AND DISMISSED ON THE MERITS PLAINTIFF'S COMPLAINT(S) AGAINST DEFENDANTS FIELDS, TITO SMITH, LARRY WILLOUGHBY AND LEONA WILLOUGHBY 29-30

III. THE TRIAL JUDGE ERRED WHEN HE ISSUED A SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S *COMPLAINT* AGAINST DEFENDANT ALAN FIELDS, JR. 31,32

IV. THE TRIAL JUDGE ERRED WHEN HE DISMISSED PLAINTIFF'S COMPLAINT AGAINST DEFENDANT JAMES L. ROSE WITHOUT PREJUDICE FOR "FAILURE TO PROSECUTE". 32-34

V. THE TRIAL JUDGE ERRED WHEN HE RULED THAT PLAINTIFF'S COMPLAINT AGAINST DEFENDANTS TITO SMITH, LARRY WILLOUGHBY, AND LEONA WILLOUGHBY WERE FRIVOLOUS 34-37

VI. THE U.S. MAGISTRATE JUDGE AND TRIAL JUDGE ERRED WHEN THEY COLLECTIVELY FAILED TO PROVIDE THE PLAINTIFF WITH A FAIR AND IMPARTIAL JUDICIAL FORUM 37-38

VII. THE TRIAL JUDGE ABUSED HIS JUDICIAL DISCRETION WHEN HE REFUSED TO TAKE ANY RESPONSIBLE ACTION TO INITIATE AN FBI INVESTIGATION OF PLAINTIFF'S STRONGLY SUPPORTED, WELL

DOCUMENTED ALLEGATIONS ABOUT MULTIPLE CRIMINAL ACTS BY FLORIDA ATTORNEYS AND/OR JUDGES. 38-39

CONCLUSION 39

CERTIFICATE OF SERVICE 40

TABLE OF CITATIONS

* 1. *Eastman Kodak Co. v. Image Technical Services, Inc.*, U.S. Cal. 1992, 112 S.Ct. 2072, 504 U.S. 451, 119 L.Ed.2d 265 - 28

* 2. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997 (1994) 36

* 3. *Key West Harbor v. City of Key West*, 987 F.2d 723 [726-727] (11th Cir. 1993) 27

* 4. *Knight v. American Eagle Fire Ins. Co. of New York*, **170 So. 664 (Fla. 1936)** 35

* 5. *Nappier v. Allstate Ins. Co.*, C.A. 11 (Ga.) 1992, 961 F.2d 168 28

* 6. *Northwestern Nat. Ins. Co. v. General Electric Credit Corp.*, **362 So.2d 120 (Fla. 3d DCA 1978)** 36

* 7. *Plaisance v. Travelers Ins. Co.*,, N.D. Ga. 1994, **880 F. Supp. 798** 28

* 8. *Posner v. Greenspan*, **25 N.Y.S. 2d 828 (N.Y. 1941)** 36

* 9. *Steward v. Champion Intern. Corp.*, 987 F.2d 732 [734] (11th Cir. 1993) 27

*10. *Truitt v. Truitt*, **383 So. 2d 276 (Fla. 5th DCA 1980)** ...36

*11. *United States v. Throckmorton*, 98 U.S. 61, 66, 25 L.Ed. 93, 95 (1878) 36

12. *Whitman v. Whitman*, 532 So.2d 82 (Fla. 3d DCA 1988) 36

STATEMENT OF JURISDICTION

This is an appeal of a final judgment entered by the United States District Court for the Middle District of Florida, Jacksonville Division, **Case No. 92-01316 CIV-J-10.** The judgment had the effect of dismissing all complaints against all five defendants; consequently, the judgment was in fact a final judgment. This appellate court has jurisdiction to review said final judgment pursuant to **28 U.S.C. 88 1291 and 1294.**

The district court below had jurisdiction of the case pursuant to **28 U.S.C. § 1332 (a) (1)** - diversity of citizenship and amount in controversy greatly exceeded $50,000.00, exclusive of interest and costs. Plaintiff Lonnie E. Willoughby, Jr. was a citizen of South Carolina while all five defendants were citizens of a different state.

The litigation at the federal district court level was ongoing for more than four years (8/11/92 - 12/12/95) before the "summary judgment" order (Doc. 337) and final judgment (Doc. 338) was rendered on December 12, 1995, effectively dismissing all of plaintiff's complaints against all defendants for various reasons. The plaintiff promptly moved for a reconsideration of the final judgment and various judicial actions ensued which effectively delayed certain actions in this appeal.

PREFACE
PARTIES AND ABBREVIATIONS

Appellant Lonnie E. Willoughby, Jr. was the plaintiff below.

Appellees Alan B. Fields, Jr. (Florida attorney), James L. Rose (Florida attorney), Tito S. Smith (Florida attorney), Larry M. Willoughby, and Leona S. Willoughby were the five Defendants below.

In this brief, the Appellant, Lonnie E. Willoughby, Jr. will be referred to as the Appellant Lon Jr., Plaintiff Lon Jr., or simply Lon Jr.

The appellees will be referred to as:

1. Alan B. Fields, Jr. - Alan Fields or Defendant Fields
2. James L. Rose - James Rose or Defendant Rose
3. Tito S. Smith - Tito Smith, Defendant Smith
4. Larry M. Willoughby - Defendant Larry
5. Leona S. Willoughby - Defendant Leona

Citations to the original 14 volume record on appeal will be made using the standard notation proscribed by the court's preliminary instructions to litigants.

STATEMENT OF THE ISSUES

The issues presented by this appeal are:

ISSUE I

Whether the trial judge erred when he refused to issue a temporary restraining order (TRO) and then conduct a hearing regarding plaintiff's motion for injunctive order.

ISSUE II

Whether trial judge erred when he granted *Defendant's Motion for Involuntary Dismissal* and dismissed on the merits plaintiff's Complaint(s) against Defendants Alan Fields and James Rose.

ISSUE III

Whether the trial judge erred when he granted a summary judgment dismissal of plaintiff's Complaint against Defendant Alan Fields.

ISSUE IV

Whether the trial judge erred when he dismissed plaintiff's Complaint against Defendant James L. Rose without prejudice for "failure to prosecute".

ISSUE V

Whether the trial judge erred when he granted a summary judgment dismissal of Plaintiff's Complaint(s) against Defendants Tito Smith, Larry Willoughby, and Leona Willoughby and ruled that the complaints were frivolous.

ISSUE VI

Whether the U.S. magistrate judge and the trial judge erred when they collectively failed to provide Plaintiff Lon Jr. with a fair and impartial judicial forum for civil litigation of money damage issues (jury trial issues) against defendants.

ISSUE VII

Whether the trial judge abused his judicial discretion when he repeatedly refused to take any responsible action to initiate an FBI investigation of Plaintiff Lon Jr's strongly supported and well documented allegations about multiple criminal acts by Florida attorneys and/or judges.

STATEMENT OF THE CASE

I. COURSE OF PROCEEDINGS & DISPOSITIONS BELOW

Appellant/Plaintiff Lon Jr's *verified* **Amended Complaint** (**R4**-137), replaced entirely the Plaintiff's initial **Complaint.** The **Amended Complaint** provides a *verified* detailed report of the extremely unfair, unethical, and fraudulent manner in which the five defendants participated in Florida civil litigation actions involving Trustee Lon Jr. (equity court non-jury action and/or subsequent appeal actions). See **Record Excerpts,** Document **137** for a true copy of Lon Jr's **Amended Complaint.** Said **Amended Complaint** is incorporated herein verbatim to provide a detailed report of the complex complaint issues. **R4**-137

The Plaintiff's diversity of jurisdiction **Complaint** was initially filed on August 11, 1992 as **Case No. 92-2257-20K** in the U.S. district

court located in Greenville County, South Carolina, (City of Greenville) - located within 10 miles of city where Plaintiff Lon Jr. resides (Mauldin, SC). **R1-1**

Extensive litigation subsequently occurred between Plaintiff Lon Jr. and the five nonresident defendants regarding their respective motions to dismiss and their mutual objections to the plaintiff's choice of "appropriate jurisdiction" for said diversity of jurisdiction case. **R1-1-27**

On December 7, 1992, Plaintiff Lon Jr's **Complaint** against the five defendants was transferred to the district court located in Duval County, Florida (Jacksonville Division, **Case No. 92-01316 Civ-J-10**). **R1-28** This situation is shown at the top of page 4 of **Civil Docket Sheet** for the case below.

The **Complaint** presented several complex complaint issues involving five defendants respectively, three of whom are Florida attorneys (Alan Fields, James Rose, and Tito Smith). Defendants Leona Willoughby and Larry Willoughby were joined as indispensable parties (mother and son - Larry is the younger brother of Plaintiff Lon Jr. - both sons are currently more than 57 years of age). **R1-1**

Several attempts were made by the defendants to have Lon Jr's **Complaint** dismissed but all were unsuccessful. **R1-2-27** Defendants also attempted to get Lon Jr's **Amended Complaint** dismissed. **R4-139, 141** Lon Jr. cannot locate a court order that addressed these two motions; it appears that they were not acted upon by the court. The five defendants filed their respective **Answer** to Lon Jr's initial **Complaint**. **R1-38, R2-80**
(Rose), **R3-86** (Smith, Larry & Leona Willoughby), **R3-97** (Fields).

On April 14, 1994, the court granted Plaintiff Lon Jr's motion (**R4**-131) to amend his **Complaint.** **R4**-136 (Order) The **Amended Complaint** was filed as Doc. 137. **R4**-137

Defendant Fields' **Answer** to the **Amended Complaint** was filed on 5/9/94. **R4**-143. See **Record Excerpts** Doc. 143.

The **Answer** for Defendants Tito Smith, Larry and Leona Willoughby regarding the **Amended Complaint** was filed on 5/16/94. **R5**-144. See **Record Excerpts** Doc. 144. Defendant Rose's **Contingent Answer** for the **Amended Complaint** was filed on 5/27/94. **R5**-159 See **Record Excerpts** Doc. 159.

As shown in the Civil Docket for the litigation below, the attorneys representing the five defendants created an extremely complex litigation process for the nonresident plaintiff, proceeding *pro se*. **Civil Docket**

On 5/19/93, the U.S. Magistrate Judge John E. Steele issued an order which denied all of Plaintiff Lon Jr's motions for Rule 11 sanctions. **R2**-78

The defendants' legal counsel(s) also filed several motions for summary judgment, and nonresident Plaintiff Lon Jr., proceeding *pro se*, responded to each motion appropriately. **R3**-113 and plaintiff's response: **R3**-122; **R5**-158, **R6**-166 and plaintiff's response: **R6**-173,174,175,176 **R6**-177, 178 - Fields' "enlarged motion" was stricken by Order **R6**-179; **R6**-181 - plaintiff's initial response: **R7**-195,196 and plaintiff's final response: **R10**-246, 247, 248, 249,250,251,252,253,254; **7**-187 - plaintiff's response: **R10**-245, 247, 248, 249, 250,251, 252, 253, 254, 263, 265, 267, 268, **R11**-277,291,292; **R12**-298, 299, 300 - plaintiff's response: **R12**-307, 309, 319, 320 (Motion for TRO and Injunction).

The district judge (Wm. Terrell Hodges) summarily denied all of plaintiff's additional motions. **R13**-337.

Lon Jr's motions (**R8**-205, **R12**-309) reported that unfair, unethical, and criminal actions had been taken against him by various officers of the Florida courts in an effort to obstruct justice in the ongoing Florida litigation and simultaneously obstruct justice in the instant district court litigation - for the direct and proximate benefit of Defendant (attorney) Alan Fields (and defendant attorneys Tito Smith and James Rose). **R12**-309, 319 & 320 (motion and Memorandum of Law moving court for temporary restraining order { TRO } and preliminary injunction).

The trial judge summarily denied Lon Jr's very responsible and well documented motion for TRO and preliminary injunction. **R12**-321 (Order) Also see **R11**-283.

R9-237 and **R13**-337 (Orders) show that the district judge summarily denied Plaintiff Lon Jr's motions requesting district judge to initiate an FBI investigation of alleged criminal acts against him by certain officers of the Florida courts (including Defendant Alan Fields).

Plaintiff Lon Jr. made numerous diligent efforts to inform the district court judge about some of the unfair, unethical, and unprofessional litigation tactics that were being used in multiple attempts to obstruct justice in the district court litigation. **R3**-115, **R4**-123, **R5**-155,161 **R6**-164, 180 **R7**-182 & 183 (motion to enlarge time for discovery) **R7**-184 & 185 (motion to compel discovery) **R7**- 191 **R9**-227, 235 & 236 (motion for reconsideration and motion to disqualify U.S. Magistrate Judge **R9**-244 **R10**-245,246,248, 250, 252, 263, 265,267 **R11**-272,277,279, 280 & 281

(motion and associated affidavit - requesting temporary restraining order), **R11**-290, 291,292 **R12**-296, 301 & 302,303,307, 309 (plaintiff's second request for FBI criminal investigation), 313 (plaintiff's notice of inability to attend pretrial conference - intimidated by improper arrest warrants), 319 & 320 (plaintiff's 2nd motion for TRO and motion for preliminary injunction), **R12**-320, 324, 327, 328,332,336,340.

Plaintiff Lon Jr. also moved the district court to enlarge the time for discovery because he believed that he had systematically been denied a fair opportunity to accomplish essential discovery. **R3**-115, **R7**-182,183,184,185

Magistrate Judge John E. Steele summarily denied the plaintiff's motion for an enlargement of time to complete discovery with Order **R7**-189

In **R8**-202-3, Magistrate Judge Steele granted Plaintiff Lon Jr's motion to compel depositions of the five defendants, but his vague and ambiguous Order created serious problems for Plaintiff Lon Jr. The plaintiff therefore filed a motion for reconsideration of said Order and also moved the court to continue trial term. **R8**-203,205

Plaintiff Lon Jr. subsequently filed a motion to disqualify Magistrate Judge Robert E. Steele. **R9**-235,236 Said motion preserved the issues reported therein for appellate review.

District Judge summarily denied Lon Jr's motion for reconsideration (**R8**-203, 205); **R9**-237 (Order)

District Judge subsequently denied Lon Jr's motion to disqualify Magistrate Judge Robert E. Steele. **R10**-256

Plaintiff Lon Jr. filed numerous valid affidavits and other evidential documents in response to the multiple motions for summary judgment filed

on behalf of the five defendants. (Citations of evidential documents provided in argument)

District Judge Hodges granted summary judgment to all defendants regarding plaintiff's complaints about:

1) conspiracy to perpetrate fraudulent litigation,

2) intentional interference with business relationships,

3) intentional infliction of emotional distress.

This situation effectively dismissed all of plaintiff's complaints against Defendants Tito Smith, Larry and Leona Willoughby, leaving only the plaintiff's "legal malpractice" complaints against Defendants Alan Fields and James Rose. **R12-297** (Order)

On August 9, 1995, Plaintiff Lon Jr. moved the court to allow him to amend his complaint (for second time), continue pretrial conference, remove case from trial calendar, requested court to initiate an investigation by FBI into numerous actions that had obstructed justice in this case, and moved the court to stay all final decisions regarding defendants' motions for summary judgment until after the FBI had completed their investigation of Lon Jr's responsible allegations of criminal actions.
R12-309.

A pretrial conference was set for 8/29/95 and a jury trial was set for 9/5/95. **R11-274**

On the day prior to the scheduled pretrial conference, nonresident Plaintiff Lon Jr. filed his notice of inability to attend the conference.
R12-313

The scheduled pretrial conference was conducted on 8/29/95 as scheduled with Plaintiff Lon Jr. absent. Defense counsel for Defendant (attorney) Alan Fields (proceeding pro se) and

Defendant James Rose (attorney Robert A. Cole) were present at the conference, as reported in the transcript that Plaintiff Lon Jr. subsequently had prepared and filed (at his expense) for the pretrial conference proceedings. **R14**-322

On the same day as the pretrial conference, attorneys Alan Fields and Robert Cole filed a "joint motion for involuntary dismissal" of Plaintiff Lon Jr's complaints against Defendants Alan Fields and James Rose. **R12**-315

On September 5, 1995, Plaintiff Lon Jr. moved the court to issue a temporary restraining order (TRO) against certain judicial actions being taken against Lon Jr. that were calculated to obstruct justice in the district court litigation. **R12**-319

Simultaneously, the plaintiff also filed his motion for a preliminary injunction and moved the court for a timely hearing on said motion (after TRO issued). **R12**-319

Lon Jr. also filed a Memorandum **R12**-320) which presented numerous evidential documents to support his allegations of unfair and unethical vindictive harassment judicial actions against nonresident Lon Jr. by multiple officers of the Florida court - because nonresident Defendant Lon Jr. had exposed several Florida judicial actions that had been perpetrated upon him in an unfair and unethical manner.

District Judge Hodges summarily denied the plaintiff's motions with Order **R12**-321.

On September 13, 1995, Plaintiff Lon Jr. filed his **Response** to defendants' joint motion for involuntary dismissal with an incorporated memorandum of law. **R12**-323.

On September 25, 1995, Plaintiff Lon Jr. filed his motion for reconsideration of the Order (**R12**-321) that had denied plaintiff's motion for

temporary restraining order (TRO) and had denied the plaintiff a prompt hearing regarding his motion for a preliminary injunction. **R12**-324

The court issued an Order which denied several motions filed by Plaintiff Lon Jr., including motion to amend pleadings [309-1], denied motion to reopen discovery [309-2], denied motion for continuance of pretrial conference [309-3], denied motion to stay decisions regarding defendants' motions for summary judgment [309-5], denied motion for district judge to take appropriate action to initiate an FBI investigation of multiple actions that had obstructed justice in the district court litigation [309-6. **R13**-337

Order **R13**-337 also granted Defendant Alan Fields supplemental motion for summary judgment [298-1], granted defendants' joint motion for involuntary dismissal [315-1].

The Order also denied numerous other motions that Plaintiff Lon Jr. had pending before the court (several motions for Rule 11 sanctions against various defense counsels). **R13**-337

In essence, the Order dismissed all of Plaintiff Lon Jr's remaining complaints against Defendants Alan Fields and James Rose. The Order therefore directed the Clerk to enter judgment for defendants Fields, Smith, Larry and Leona Willoughby and against the plaintiff and to dismiss the claims against defendant Rose without prejudice for failure to prosecute. The Order was signed by District Judge Wm. Terrell Hodges. The Civil Docket indicates that the Order was filed on 12/12/95. **R13**-337

The Clerk entered said Judgment on 12/12/95. **R13**-338 and the case was closed.

Nonresident Plaintiff Lon Jr. timely served copies of his motion for reconsideration of the Judgment Order to all opposing counsel on

December 27, 1995. Simultaneously, Lon Jr. mailed his motion to the Court using a commercial overnight mail delivery service located in South Carolina. The motion was promptly delivered to the court the following morning (December 28, 1995). **R13-340**

Said motion was summarily denied by District Judge Hodges on January 9, 1996. **R13-343**

Plaintiff Lon Jr. timely filed his notice of appeal on February 5, 1996 (**R13-344**) and filed an amended notice of appeal the following day, January 6, 1996 (**R13-345**).

On January 6, 1996, Lon Jr. also filed his directions to the Clerk regarding preparation of record on appeal. **R13-346**

III. STANDARD OF REVIEW

Court of appeal reviews denial of "motion for temporary restraining order and injunction" for abuse of discretion, but when an error of law is involved, the review is de nova.

Court of Appeals reviews grant of summary judgment *de novo* and applies same standard used in district court. *Wilson v. Northcutt*, C.A. 11 (Ga.) 1993, 987 F.2d 719, rehearing denied.

SUMMARY OF THE ARGUMENTS

Argument Issue I shows that the trial judge abused his judicial authority and discretion when he repeatedly ignored the unfair and unethical litigation tactics that were being used against nonresident Plaintiff Lon Jr., proceeding pro se, even though it was clear, or should have been clear, to the trial judge that said litigation tactics were calculated to obstruct justice.

Argument Issue II shows that the district court judge abused his judicial discretion by granting *Defendant's Motion for Involuntary Dismissal* (**R12-315**) and dismissing "on the

merits" plaintiff's **Complaint(s)** against Defendants Alan Fields and James Rose (**R12-337**) when it was clear, or should have been clear, that officers of the Florida court had used unfair and unethical litigation tactics against nonresident (defendant) Lon Jr. - calculated to obstruct justice in the instant litigation for benefit of three Florida attorneys (defendants Fields, Rose, and Smith).

Argument Issue III shows that the trial judge abused his judicial authority and discretion by granting a summary judgment dismissal of plaintiff's **Complaint** against Defendant Alan B. Fields, Jr., is spite of the fact that Plaintiff Lon Jr. had provided a strong prima facie showing that certain Florida judges were unfairly and unethically "cooperating" with (criminal conspiracy) attorney Alan Fields' self-serving efforts to obstruct justice in the district court litigation. **R12-337**

Argument Issues IV shows that the district court judge also abused his judicial authority when he dismissed plaintiff's **Complaint** against Defendant James L. Rose without prejudice for "failure to prosecute". **R12-337** It was clear, or should have been clear, to the trial judge that officers of the Florida court had obstructed justice in the district court litigation by preventing nonresident Lon Jr. from prosecuting his case against Defendant (attorney) James Rose.

Argument Issue V shows that the trial judge erred when he discounted or ignored the substantial valid evidence presented by Plaintiff Lon Jr. to show that a summary judgment dismissal of the plaintiff's Complaint(s) against Defendants Tito Smith, Larry Willoughby, and Leona Willoughby were not warranted. Furthermore, the record on appeal shows clearly that Lon Jr's responsible Complaints were <u>not</u> <u>frivolous</u> Complaints, as ruled erroneously by the district judge.

R12-297 (Order)

Argument Issue VI shows that the district judge and the U.S. magistrate judge abused their judicial authority and discretion when they repeatedly refused to take the actions necessary to ensure that the nonresident Plaintiff Lon Jr. would have a fair and impartial judicial forum for litigation of his money damage issues (jury trial issues) against the five defendants.

Argument Issue VII shows that the trial judge repeatedly refused to give responsible consideration to Plaintiff Lon Jr's requests for the court to take appropriate actions to initiate an FBI investigation of the alleged criminal actions which the plaintiff claimed were obstructing justice in the case.

The record on appeal clearly shows that Plaintiff Lon Jr. was denied due process of law because he was denied a fair and impartial judicial forum in which to litigate his complaints.

The collective unfair and unethical judicial actions of the U.S. magistrate judge and the trial judge provide sufficient basis to invalidate and reverse all judgments entered against plaintiff.

ARGUMENT

I. THE TRIAL JUDGE ERRED WHEN HE REFUSED TO ISSUE A TEMPORARY RESTRAINING ORDER (TRO) AND THEN CONDUCT A HEARING REGARDING PLAINTIFF'S MOTION FOR INJUNCTIVE ORDER.

Plaintiff Lon Jr. repeatedly informed the trial court about judicial actions that had been taken, or were being taken, against nonresident (defendant) Lon Jr. that were calculated to obstruct justice in the district court litigation.

Lon Jr. filed numerous motions for rule 11 sanctions against defense counsels (three) recurring use of unfair, unethical, and unprofessional litigation tactics. He diligently reported said actions to the court in a responsible effort to avoided being prejudiced by said litigation tactics. **R2**-59,60,64,65,70,71.

Several of the briefs filed by said attorneys contained misrepresentations of relevant legal standards and/or misrepresentations of relevant factual information. The unfair, unethical, and unprofessional "litigation tactics" forced Plaintiff Lon Jr. to prepare and file numerous motions for Rule 11 sanctions against the opposing attorneys, in an effort to avoid being severely prejudiced by said litigation tactics. **R2**-59,60,64,65,70,71.

On 5/19/93, U.S. Magistrate Judge John E. Steele issued an Order which denied all of the Plaintiff's motions for Rule 11 sanctions. **R2**-78

The order cited above clearly gave a **green light** to defendants' legal counsels (3) for use of such unfair and unethical litigation tactics. The magistrate judge's Order effectively announced that defense counsel(s) would likely be allowed to utilize, throughout the remainder of the litigation, any unfair and unethical litigation tactics they could devise for use against the nonresident *pro se* plaintiff. **R2**-78

Consequently, said defense counsel(s) continued to utilize unfair and unethical litigation tactics against the *pro se* plaintiff. Plaintiff Willoughby subsequently had to file an additional motion for Rule 11 sanctions against opposing legal counsel. See **R3**-90 U.S. Magistrate Judge John Steele summarily denied plaintiff's motion for sanctions. **R3**-112

Plaintiff Lon Jr. filed other legal briefs that reported unfair and unethical judicial actions by

Florida attorneys and/or judges that were clearly calculated to obstruct justice in the district court litigation. **R3**-115 (plaintiff's motion for enlargement of time), **R7**-182 (plaintiff's motion for enlargement of time to complete discovery), **R8**-205, **R**-227, **R9**-235,239, **R11**-280,281, **R12**-307,308,309,319,319,320,323,324,327

The record on appeal therefore proves conclusively that Plaintiff Lon Jr. diligently reported in detailed legal briefs, on numerous occasions, how the litigation process was being obstructed by various officers of the Florida court. **(See numerous legal briefs cited above)** However, the magistrate judge and the trial judge repeatedly refused to take responsible judicial actions to terminate and then initiate sanctions or appropriate investigations of the unfair, unethical, and unprofessional litigation tactics being used against the nonresident pro se plaintiff. **R2**-78,85 **R3**-112 **R7**-189 **R8**-202,221 **R9**-237 **R10**-256 **R11**-283 **R12**- 297,321 **R13**-337

This diversity of jurisdiction case exposes some of the extremely unfair and unethical judicial actions (criminal acts) taken against nonresident Defendant Lon Jr. by multiple officers of Florida courts. **R3**-115 (plaintiff's motion for enlargement of time), **R7**-182 (plaintiff's motion for enlargement of time to complete discovery), **R8**-205, **R**-227, **R9**-235,239, **R11**-280,281, **R12**-307, 308,309,319,319,320,323,324,327

The legal briefs cited above show how easy it is for attorneys and judges (trial or appellate) to willfully create or "allow" a fraudulent litigation process for their own self-serving benefit, financially and/or otherwise (protect their desired "legal turf", and ruthlessly and vindictively persecute any litigant they choose to punish for some alleged or imagined "transgression" against a

member of the "brotherhood" (legal profession in general).

Plaintiff Lon Jr's **Amended Complaint** (**R4**-137) reports in substantial detail how Cotrustee Lon Jr. was ruthlessly punished in the Florida "litigation process" by deceitful, unscrupulous attorneys and judges. Those "judicial actions" provided the basis for the diversity of jurisdiction litigation in the district court.

The **Amended Complaint** (**R4**-137) shows that nonresident Lon Jr. was ruthlessly punished by the Florida "legal profession" because he had responsibly helped his parents, over a period of years, plan their substantial joint estate to achieve their mutual lifetime financial goals and also achieve their mutual goals of providing substantial financial assets to their designated heirs.

The competent estate planning that occurred with the assistance of several attorneys, using two individual inter vivos trust agreements, enabled the Willoughby parents to avoid having their substantial estate assets subjected to the probate court process upon either of their deaths. **R10**-252,263 **R11**-277

When a family dispute occurred about the manner in which cotrustee Lon Jr. and Larry were managing the trust estate assets ($600,000+), Marital Trust Beneficiary brought "local" attorney Tito Smith into the dispute. Attorney Smith helped Beneficiary Leona sue her eldest son, Cotrustee Lon Jr., and forced Lon Jr. to come to Putnam County, Florida to litigate the dispute. **R10**-252,263 **R11**-277

Defendant Cotrustee Lon Jr. then retained the services of Attorney Alan Fields as defense counsel. These circumstances are reported in detail in Lon Jr's **Amended Complaint** (**R4**-137) The two attorneys then proceeded to collusively

perpetrate a fraudulent litigation process against Cotrustee Lon Jr. (**R4**-137); **R10**-248,250,252,263,265,267; **R11**-277,291,292; **R12**-307.

The evidence documents cited above show that the ruthless persecution of nonresident Lon Jr. continued throughout the litigation in the federal district court below and eventually resulted in Plaintiff Lon Jr. being forced into this time consuming and expensive appeal process as a continuation of the vindictive harassment "judicial persecution process".

The defendants' legal counsel(s) also filed several motions for summary judgment, and non-resident Plaintiff Lon Jr., proceeding *pro se*, responded to each motion appropriately. **R3**-113 and plaintiff's response: **R3**-122; **R5**-158, **R6**-166 and plaintiff's response: **R6**-173,174,175,176 **R6**-177, 178 - Fields' "enlarged motion" was stricken by Order **R6**-179; **R6**-181 - plaintiff's initial response: **R7**-195,196 and plaintiff's final response: **R10**-246, 247,248,249,250,251,252,253,254; 7-187 - plaintiff's response: **R10**-245,247,248,249,250, 251,252,253,254,263,265,267,268, **R11**-277, 291, 292; **R12**-298,299,300 - plaintiff's response: **R12**-307,309,319,320 (Motion for TRO and Injunction).

Legal counsel for various defendants respectively continued to use unfair and unethical litigation tactics against *pro se* Plaintiff Lon Jr. The plaintiff was thereby forced to prepare and file additional motions for Rule 11 sanctions against said defense counsel(s) in a diligent effort to inform the court about the self-serving efforts of defense counsels to obstruct justice wherever possible in the litigation process. **R13**-327, 328, 332, 334,336

The district judge (Wm. Terrell Hodges) summarily denied all of plaintiff's additional motions for sanctions without providing even a responsible cautionary "warning" to defense counsel about their repeated use of unfair, unethical, and unprofessional litigation tactics. R13-337.

Plaintiff Lon Jr's filed eleven motions requesting imposition of Rule 11 sanctions upon respective defense counsel(s); all motions were denied by either U.S. Magistrate Judge John E. Steele or District Judge Wm. T. Hodges, as reported above. None of the Orders, responding to the plaintiff's motions for Rule 11 sanctions, presented even a cautionary warning about the use of unfair, unethical, or unprofessional litigation tactics.

The records cited above clearly show that the magistrate judge and/or the district judge repeatedly refused to provide any notice whatsoever to the offending defense counsel(s) that unfair, unethical, unprofessional litigation tactics would not be tolerated by the court. The repeated refusal to impose any sanctions whatsoever made it quite clear to all parties that defense counsel(s) would not be sanctioned in any manner for misrepresenting or misconstruing anything (facts or relevant legal standards) that might offer some tactical advantage to their arguments.

As reported above, the unfair and/or unethical litigation tactics used repeatedly by defense counsel(s) effectively forced Plaintiff Lon Jr. into a position where he had to:

1) acquiesce to defense counsel(s) use of unfair, unethical, and unprofessional litigation tactics or

2) accomplish a substantial amount of time consuming legal research and work in drafting and word processing 11 additional legal briefs that

would properly expose the unfair, unethical, and unprofessional litigation tactics used by defense counsel(s). Otherwise, Plaintiff Lon Jr. could have been prejudiced severely by said litigation tactics.

The record on appeal also proves that Plaintiff Lon Jr. diligently moved the court to take appropriate action to initiate an investigation by the Federal Bureau of Investigation (FBI) of alleged criminal actions that had been committed against nonresident Lon Jr. by various officers of the Florida court(s). **R8**-205, **R12**-309

Lon Jr's motions (**R8**-205, **R12**-309) reported that unfair, unethical, and criminal actions had been taken against him by various officers of the Florida courts in an effort to obstruct justice in the ongoing Florida litigation and simultaneously obstruct justice in the instant district court litigation - for the direct and proximate benefit of Defendant (attorney) Alan Fields (and defendant attorneys Tito Smith and James Rose). **R12**-309, 319 & 320 (motion and Memorandum of Law moving court for temporary restraining order { TRO } and preliminary injunction).

The trial judge summarily denied Lon Jr's very responsible and well documented motion for TRO and preliminary injunction. **R12**-321 (Order) Also see **R11**-283.

R9-237 and **R13**-337 (Orders) show that the district judge summarily denied Plaintiff Lon Jr's motions requesting district judge to initiate an FBI investigation of alleged criminal acts against him by certain officers of the Florida courts (including Defendant Alan Fields). In each of these situations, the record on appeal proves that the trial judge summarily refused to take any responsible action that could have helped:

1) prevent further obstruction of justice in the district court litigation and

2) take actions that would help protect and defend Plaintiff Lon Jr's federally secured civil rights - protected rights which had been and were still being severely violated by multiple officers of the Florida courts.

The following cited documents prove conclusively that Plaintiff Lon Jr. made numerous diligent efforts to inform the district court judge about some of the unfair, unethical, and unprofessional litigation tactics that were being used in an attempt to obstruct justice in the district court litigation. **R3**-115, **R4**-123, **R5**-155,161 **R6**-164, 180 **R7**-182 & 183 (motion to enlarge time for discovery) **R7**-184 & 185 (motion to compel discovery) **R7**- 191 **R9**-227, 235 & 236 (motion for reconsideration and motion to disqualify U.S. Magistrate Judge **R9**-244 **R10**-245,246,248, 250,252,263,265,267 **R11**-272,277,279, 280 & 281 (motion and associated affidavit - requesting temporary restraining order), **R11**-290, 291,292 **R12**-296, 301 & 302,303,307, 309 (plaintiff's second request for FBI criminal investigation), 313 (plaintiff's notice of inability to attend pretrial conference - intimidated by improper arrest warrants), 319 & 320 (plaintiff's 2nd motion for TRO and motion for preliminary injunction), **R12**-320,324,327,328,332,336,340.

As shown in the Orders cited above, U.S. Magistrate Judge John E. Steele and/or District Judge Wm. Terrell Hodges repeatedly refused to take responsible judicial actions that could have terminated the ruthless vindictive harassment and persecution being perpetrated against nonresident Lon Jr. by various officers of Florida court's. See **R12**-313, 319 & 320.

Said criminal actions were clearly taken in self-serving unethical judicial schemes to "help" Counterclaim Defendant (attorney) Alan Fields

evade civil prosecution by Counterclaim Plaintiff Lon Jr. in ongoing litigation in Putnam County, Florida (Palatka), about 65 miles from Jacksonville, Florida. Some of the issues in that civil litigation were related to Lon Jr's complaints against Defendant Fields in the instant district court litigation.

Lon Jr's motions showed that multiple officers of the Florida courts, including attorney Alan Fields, had obviously conspired to corrupt the Florida litigation process wherever possible for the direct and proximate benefit of attorney Alan Fields and his Florida law firm, **Dowda and Fields, Chartered**. **R12**-319 & 320 (plaintiff's 2nd motion for TRO and the associated motion for preliminary injunction) provide a detailed report of those events.

Defendant (attorney) Smith is also from Palatka, Florida and it was clear to Lon Jr. that the unfair, unethical, and criminal actions taken against him by officers of the Florida courts were also calculated to "help" attorney Tito Smith by preventing Plaintiff Lon Jr. from prosecuting in the Florida district court his valid complaints against Defendants Alan Fields, Tito Smith, and James Rose (all Florida attorneys).

Plaintiff Lon Jr. also moved the district court to enlarge the time for discovery because he had been prevented from accomplishing essential discovery actions by the combination of:

1) a continuing series of vindictive harassment judicial actions by the Florida courts and

2) the unfair, unethical, and unprofessional litigation tactics utilized by defense counsels in the district court litigation.

R7-182,183,184,185

Magistrate Judge John E. Steele summarily denied the plaintiff's motion for an enlargement of

time to complete discovery R7-182 with Order R7-189, in spite of the obvious fact that the nonresident plaintiff could not likely accomplish discovery actions in North Carolina and Florida, within the time allowed for completion of discovery, while the nonresident plaintiff was continually being bombarded by vindictive harassment litigation actions by Attorney Alan Fields and the "cooperative" local judges in respective Florida courts. R3-115, R7-182

In R8-202-3, Magistrate Judge Steele granted Plaintiff Lon Jr's motion to compel depositions of the five defendants, but his Order did not authorize the plaintiff to take the depositions of all five defendants within the local area of Duval County (City of Jacksonville, Florida). Order R3-112 had previously required that the deposition of Defendant Larry Willoughby be taken in the district of his residence in North Carolina.

Order R8-202 also set the time for completion of the discovery actions so tight that nonresident Plaintiff Lon Jr., proceeding *pro se*, would likely find it impossible to coordinate with opposing legal counsel regarding the depositions of five defendants, reach mutual agreements regarding dates, times, and locations for conducting depositions of each defendant respectively (two states and two federal districts involved), arrange for court reporters to attend said depositions at various locations (North Carolina and multiple locations in Florida), and for Plaintiff Lon Jr. (residing in South Carolina) to then travel to the various distant locations in said states to accomplish said depositions of the five defendants.

Order R8-202 also required nonresident Plaintiff Lon Jr. to accomplish other discovery task in the same time period as for the depositions. See page 3 of said Order regarding

the production of documents within 10 days of date of Order. R8-202

In essence, the magistrate judge had forced Lon Jr. into a situation where he could not reasonably accomplish the actions required of him within the short time periods established by the magistrate judge's Order. R8-202

In addition, Lon Jr. was also being subjected to unfair, unethical vindictive judicial harassment actions in the Florida courts (trial court and appellate court simultaneously) due to the self-serving litigation tactics used collusively by attorney Alan Fields and certain "local" Florida judges operating in and for Putnam County, Florida. See R3-115, plaintiff's motion for enlargement of time, and see R7-182, plaintiff's motion for enlargement of time to complete discovery.

Furthermore, Plaintiff Lon Jr's motion to compel discovery (R7-184) had moved the court to compel the five defendants to produce certain documents at the requested depositions. The magistrate judge utilized evasive judicial actions that would effectively allow the five defendants to ignore the nonresident plaintiff's request for production of said evidential documents. R7-202

In addition, the magistrate judge failed to respond to Plaintiff Lon Jr's request that the court compel certain defendants to provide answers to interrogatories that Plaintiff Lon Jr. had previously served upon Defendants Tito Smith, Larry Willoughby, and Leona Willoughby many weeks earlier. Their legal counsel had subsequently used unfair and unprofessional legal tactics to enable the three defendants avoid and evade providing answers to any of Plaintiff Lon Jr's interrogatories to the defendants named above. See R7-184,185 regarding Lon Jr's diligent efforts to communicate

and consult with opposing defense counsel regarding said discovery deficiencies (interrogatories unanswered).

The magistrate judge's failure to respond to this deficiency in Order **R8**-202 effectively "allowed" defense counsel to ignore Plaintiff Lon Jr's diligent efforts to obtain answers to his interrogatories for Defendants Smith, Larry, and Leona Willoughby. This discovery deficiency severely prejudiced the litigation process against nonresident Plaintiff Lon Jr. in an unfair manner regarding the three defendants involved (Smith, Larry, and Leona).

The ambiguous verbiage in Order **R7**-202 ignored Plaintiff Lon Jr's previous responsible efforts to communicate with opposing legal counsel (attorney Halbach) regarding the need for answers to Lon Jr's interrogatories to the three defendants named above. Therefore, unless there was additional action by the court regarding this essential discovery, it was clear to Lon Jr. that answers to his interrogatories would <u>not</u> be provided to him prior to the time period authorized by the magistrate judge for Plaintiff Lon Jr. to take deposition of the three defendants named above. **R7**-202 It was clear, or should have been clear, to the magistrate judge that Plaintiff Lon Jr. needed answers to his interrogatories <u>prior to</u> the time he began depositions for the five defendants.

As a result of this grave deficiency in the magistrate judge's Order, Lon Jr. was forced to prepare a motion for reconsideration (**R8**-207) of said Order (**R7**-202), reporting said deficiency regarding the need for the court to compel production of answers to Plaintiff Lon Jr's interrogatories to Defendants Tito Smith, Larry, and Leona Willoughby.

Magistrate Steele summarily denied Lon Jr's motion for reconsideration without addressing in any manner the deficient discovery actions of the three defendants regarding the plaintiff's timely interrogatories to each of them. **R9**-237 Consequently, the magistrate judge's "inaction" effectively authorized the three defendants to ignore Lon Jr's timely served interrogatories. This situation, combined with the other discovery deficiencies that occurred due to circumstances beyond Lon Jr's control, severely corrupted the litigation process. The accumulation of information contained in the documents cited thus far show clearly that pro se Plaintiff Lon Jr. was systematically denied a fair opportunity to prosecute his complaints against the five defendants.

As shown herein, the district court litigation was severely corrupted in numerous ways by the unfair, unethical, and unprofessional litigation tactics used by defense counsel against the nonresident *pro se* litigant.

In addition, the litigation process was also severely corrupted by the manner in which the magistrate judge and the trial judge effectively "cooperated" with the unfair and unethical judicial actions that had been and were still being taken against nonresident Lon Jr. by officers of the Florida courts in an effort to prevent Plaintiff Lon Jr. from prosecuting his complaints against three Florida attorneys. See **R12**-319, 319,320 regarding some of those situations.

In essence, a heinous fraud was perpetrated upon the district court by defense counsel(s) for the five defendants and by officers of the Florida courts - involved in ongoing civil litigation originating in Putnam County, Florida (Palatka) wherein nonresident Lon Jr. was a defendant in a law-

suit filed by attorney Alan Fields' law firm. **R3**-115, **R5**-155, **R6**-164, **R9**-227, **R9**-235,**R** 11-280,281, **R12**-309, 319, 319, 320, **R13**-340

The district court trial judge clearly abused his judicial discretion when he refused to issue a temporary restraining order (TRO) and refused to promptly conduct a hearing regarding Plaintiff Lon Jr's strongly supported motion for injunctive order. See **R11**-280,281, 283 (Order); **R12**-319,320, 321 (Order)

The record shows that Plaintiff Lon Jr's second motion for temporary restraining order (**R12**-319,319,320) made a very strong perpetrated upon Lon Jr., and were still being perpetrated upon him, by officers of the Florida court - with two primary objective:

1) obstructing justice in the ongoing Florida litigation against nonresident (defendant) Lon Jr. for the direct and proximate benefit of attorney Alan Fields and his law firm, **Dowda and Fields, Chartered** (located in Palatka, Florida), and

2) obstructing justice in the district court litigation for the direct and proximate benefit of Defendant (attorney) Alan Fields and two other defendants (also Florida attorneys), Tito Smith (Palatka, Florida) and James Rose (Daytona Beach, Florida).

It was clearly an abuse of judicial discretion for the magistrate judge and the district court judge to ignore Plaintiff's Lon Jr's responsible detailed reports about litigation actions, in the Florida courts, and in the instant litigation, which were clearly calculated to obstruct justice in the district court litigation.

From the detailed report herein, it is clear that U.S. Magistrate Judge John E. Steele and District Judge Wm. Terrell Hodges effectively "cooperated" with numerous litigation actions

which obstructed justice in the district court litigation. See **R9**-235,236 - Plaintiff's motion to disqualify Magistrate Judge Robert E. Steele. Said motion preserved the issues reported therein for appellate review.

It is now very clear to Plaintiff Lon Jr. that he was <u>not</u> provided with a fair and impartial judicial forum in which to prosecute his complaints against three Florida attorneys (Fields, Rose, and Smith), Larry Willoughby and Leona Willoughby.

For the reasons reported above, the litigation was fatally and fundamentally flawed by said abuse of judicial discretion.

The final judgment rendered in the district court below granted summary judgment dismissal of the plaintiff's complaints. Consequently, this appeal must be a de novo (plenary) review, pursuant to *Key West Harbor v. City of Key West*, 987 F.2d 723 [726-727] (11th Cir. 1993) and *Steward v. Champion Intern. Corp.*, 987 F.2d 732 [734] (11th Cir. 1993). A question of law is also subject to plenary review pursuant to *Steward v. Champion Intern. Corp.*, Supra. [734].

It is therefore not necessary for the plaintiff to restate his multiple detailed memorandum(s) of law in this appeal brief; the plaintiff's valid arguments were well stated in numerous legal briefs prepared and filed by Plaintiff Lon Jr., as cited above.

On appeal from summary judgment dismissal of complaints, Court of Appeals must ascertain whether any genuine issue of material fact remains and whether moving party is entitled to judgment as matter of law. *Nappier v. Allstate Ins. Co.*, C.A. 11 (Ga.) 1992, 961 F.2d 168.

EVIDENCE - CONSIDERATION: On motion for summary judgment, evidence of non-

movant is to be believed, and all justifiable inferences are to be drawn in his favor; if so viewed, a rational trier of fact could find a verdict for nonmoving party under substantive evidential standard, nonmoving party can defeat summary judgment. *Plaisance v. Travelers Ins. Co.*,, N.D. Ga. 1994, **880 F.Supp. 798**, affirmed **56 F.3d 1391** (C.A. 11th Cir.), Certiorari denied **116 S.Ct. 338**, rehearing denied **116 S.Ct. 585**.

REASONABLE INFERENCES: On appeal of grant of summary judgment, nonmovant's evidence is to be believed, and all justifiable inferences are to be drawn in its favor. *Eastman Kodak Co. v. Image Technical Services, Inc.*, U.S. Cal. 1992, **112 S.Ct. 2072**, 504 U.S. 451, 119 L.Ed.2d 265.

Due to the convoluted conglomeration of litigation actions that were forced upon the plaintiff by the multiple defense counsels (three separate attorneys) for the five defendants, it is impractical and essentially impossible for Lon Jr. to restate numerous complex legal arguments in a 55 page appeal brief. The plaintiff therefore adopts and incorporates herein by reference the plaintiff's legal briefs cited in the argument above for plenary review by the review panel of judges.

As reported herein, U.S. Magistrate Judge John E. Steele and District Judge Wm. Terrell Hodges effectively "cooperated" with numerous litigation actions which obstructed justice in the district court litigation. See **R9**-235,236 - Plaintiff's motion to disqualify Magistrate Judge Robert E. Steele. Said motion preserved the issues reported therein for appellate review.

It is now very clear to Plaintiff Lon Jr. that he was <u>not</u> provided with a fair and impartial judicial forum in which to prosecute his complaints against three Florida attorneys (Fields,

Rose, and Smith), Larry Willoughby and Leona Willoughby.

WHEREFORE, for the reasons reported herein, and in the interest of justice, the dismissal of the plaintiff's complaints must be reversed.

II. THE TRIAL JUDGE ERRED WHEN HE GRANTED *DEFENDANT'S MOTION FOR INVOLUNTARY DISMISSAL* AND DISMISSED ON THE MERITS PLAINTIFF'S COMPLAINT(S) AGAINST DEFENDANTS ALAN FIELDS AND JAMES ROSE.

The argument contained in **Issue I** is adopted and incorporated herein verbatim as part of this argument.

Argument presented in **Issue I** shows that the district court failed to provide a fair and impartial judicial forum for the plaintiff to litigate his complaints against Defendants Alan Fields, Tito Smith, Larry Willoughby, and Leona Willoughby. Consequently, the litigation process was fatally flawed.

In the district court litigation below, Lon Jr's legal briefs reported several unfair and unethical litigation actions that had been instigated collusively by certain officers of the Florida court(s) against nonresident (defendant and counterclaimant) Lon Jr. in an effort to "help" Counterdefendants Alan Fields and his law firm, **Dowda and Fields, Chartered**, avoid and evade civil prosecution for the extremely deceitful and fraudulent manner in which attorney Fields represented Cotrustee Lon Jr. in Florida Circuit Case No. 89-5224-CA-M (Putnam County, Florida - 1989). Certain unfair and unethical judicial actions by the Florida courts were also calculated to obstruct

justice in the federal district court litigation. See especially **R3**-115 and **R12**-319,319,320.

In addition, several unfair and unethical litigation actions were instigated by three defense counsels (including Alan Fields) in the district court litigation below, and some of this actions were clearly calculated to obstruct justice in the case. With the complex and outrageous circumstances that developed over time in the district court litigation below, it was a clearly an abuse of "fair and responsible judicial discretion" for the trial judge to grant the *Defendant's Motion for Involuntary Dismissal* (**R12-315**) and dismiss "on the merits" plaintiff's **Complaint(s)** against Defendants Alan Fields, Tito Smith, Larry Willoughby and Leona Willoughby. **R12-321.**

WHEREFORE, for the reasons reported herein, and in the interest of justice, the dismissal of the plaintiff's complaints must be reversed.

III. THE TRIAL JUDGE ERRED WHEN HE ISSUED A SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S *COMPLAINT* AGAINST DEFENDANT ALAN FIELDS.

The argument contained in **Issue I and II** are adopted and incorporated herein verbatim as part of this argument issue.

Arguments presented in **Issue I, II** show that the district court failed to provide a fair and impartial judicial forum for the plaintiff to litigate his complaints against Defendants Alan Fields, James Rose, Tito Smith, Larry and Leona Willoughby. The litigation process was therefore fatally flawed. Consequently, the summary judgment dismissal of Lon Jr's complaints against Defendant (attorney) Alan Fields must be reversed. See legal

brief citations from **Argument I** which are repeated here for convenience of the court and opposing parties: **R3**-115 (plaintiff's motion for enlargement of time), **R7**-182 (plaintiff's motion for enlargement of time to complete discovery), **R8**-205, **R**-227, **R9**-235,239, **R11**-280,281, **R12**-307, 308, 309,319,319,320,323,324,327

The record on appeal therefore proves conclusively that Plaintiff Lon Jr. diligently reported in detailed legal briefs, on numerous occasions, how the litigation process was being obstructed by various officers of the Florida court. **(See numerous legal briefs cited above)** However, the magistrate judge and the trial judge repeatedly refused to take responsible judicial actions to terminate and then initiate sanctions or appropriate investigations of the unfair, unethical, and unprofessional litigation tactics being used against the nonresident pro se plaintiff. **R2**-78,85 **R3**-112 **R7**-189 **R8**-202,221 **R9**-237 **R10**-256 **R11**-283 **R12**- 297,321 **R13**-337

Plaintiff Lon Jr. diligently exposed some of the extremely unfair and unethical judicial actions (including criminal actions) taken against nonresident Defendant Lon Jr. by multiple officers of Florida courts. **R3**-115 (plaintiff's motion for enlargement of time), **R7**-182 (plaintiff's motion for enlargement of time to complete discovery), **R8**-205, **R**-227, **R9**-235,239, **R11**-280,281, **R12**-307,308,309,319,319,320,323,324,327

Considering the complex and outrageous circumstances that developed over time in the litigation below, due to several officers of the Florida court(s) and certain officers of the federal district court perpetrating litigation actions which were clearly calculated to obstruct justice in the case, it was a serious abuse of discretion for the trial judge to grant a summary judgment dismissal

of plaintiff's **Complaint** against Defendant Alan B. Fields, Jr. **R12-321** See especially **R3-115, R7-182, R12-307, 319,319,320,323,324**

WHEREFORE, for the reasons reported herein, and in the interest of justice, the dismissal of the plaintiff's complaints against Defendant Alan Fields must be reversed.

IV. THE TRIAL JUDGE ERRED WHEN HE DISMISSED PLAINTIFF'S *COMPLAINT* AGAINST DEFENDANT JAMES L. ROSE WITHOUT PREJUDICE FOR "FAILURE TO PROSECUTE".

The argument contained in **Issue I, II, III** are adopted and incorporated herein verbatim as part of this argument.

For the reasons reported above, it is clear that the trial judge erred when he dismissed plaintiff's **Complaint** against Defendant Rose without prejudice for "failure to prosecute". **R12-321**

The trial judge knew, or should have known, that the numerous unfair and unethical actions reported to him diligently by Plaintiff Lon Jr. had severely obstructed justice in the district court litigation. It was also clear, or should have been clear, that Plaintiff Lon Jr. had presented a very strong prima facie basis for the court to promptly take appropriate actions to initiate an FBI investigation of the alleged criminal actions that had been perpetrated, and/or were still being perpetrated, upon the nonresident Lon Jr. (interstate criminal acts of mail fraud and wire fraud, obstruction of justice in federal litigation, and conspiracy to interfere with federally secured civil rights - multiple violations of **18 U.S.C. 241**).

Consequently, the trial court should have granted plaintiff's motion to stay decisions, remove

case from trial calendar, and initiate FBI criminal investigations as the plaintiff requested in motion. R12-309

The record on appeal shows that the trial judge abused his judicial discretion by denying Plaintiff Lon Jr. any relief from the severe persecution that he was forced to endure at the hands of officers of various Florida court. R13-337

WHEREFORE, for the reasons reported herein, and in the interest of justice, the dismissal of the plaintiff's complaints against James L. Rose must be reversed.

V. THE TRIAL JUDGE ERRED WHEN HE GRANTED A SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S *COMPLAINT(S)* AGAINST DEFENDANTS TITO SMITH, LARRY WILLOUGHBY, AND LEONA WILLOUGHBY AND RULED THAT THE COMPLAINTS WERE FRIVOLOUS.

The argument contained in Issue I, II, III, IV are adopted and incorporated herein verbatim as part of this argument.

From the foregoing arguments, incorporated herein by reference, it is very clear that Plaintiff Lon Jr. was denied a fair opportunity to accomplish essential discovery actions regarding his complaints against Defendants Tito Smith, Larry and Leona Willoughby. Therefore, the litigation below was fatally flawed and it was abuse of discretion for the trial judge to rule that the plaintiff's complaints were frivolous. In addition, the plaintiff's legal briefs and affidavits had shown a substantial legal basis and a substantial factual evidential basis for the complaints.

Because the case below was a diversity of jurisdiction action, Florida legal standards control

the elements of each complaint issue and also control the amount of evidential proof required for the plaintiff to prove each complaint. In essence, the district court is supposed to adjudicate the complaint issues in the manner a Florida circuit court would adjudicate the complaints.

Lon Jr's relevant legal brief arguments showed very clearly, in great detail, that under the controlling Florida legal standard regarding a civil conspiracy, a conspiracy may be proven by testimony which prima facie tends to prove the existence of the conspiracy or from which its existence might reasonably be inferred. *Knight v. American Eagle Fire Ins. Co. of New York*, **170 So. 664 (Fla. 1936)**. See plaintiff's legal briefs, memorandums of law, and affidavits responding to defendants' motions for summary judgment: **R10-**246,248,250,252,254,263,265, 291,292.

Because Cotrustee Lon Jr. was an eye witness to many events related to the alleged conspiracy to perpetrate fraudulent litigation, and has personal knowledge of many of the events which transpired as a result of the conspiracy, and has personal knowledge of some of the circumstances involved with said conspiratorial actions, Plaintiff Lon Jr. must be provided with a fair and impartial forum wherein he can present testimony to a jury regarding those situations. Under these circumstances, it was an abuse of judicial discretion for the trial judge to arbitrarily and summarily discount all of the valid documentary evidence and affidavit testimony presented by Lon Jr. during summary judgment proceedings.

The record on appeal shows that none of the defendants have taken the deposition of Plaintiff Lon Jr. Under the outrageously unfair and unethical circumstances involved with the Florida litigation that occurred in 1989 ("equity court"

trial) and the fraudulent appeal during 1989-1991, Plaintiff Lon Jr. must be provided with a fair opportunity to present personal testimony to a jury regarding the complex conspiracy complaint issue.

A conspiracy may be proved by circumstantial evidence. *Northwestern Nat. Ins. Co. v. General Electric Credit Corp.*, **362 So.2d 120 (Fla. 3d DCA 1978)**.

If, in furtherance of conspiracy, a fraud is perpetrated on court which granted judgment ..... an actionable tort was committed. *Posner v. Greenspan*, **25 N.Y.S. 2d 828 (N.Y. 1941)**

In regard to setting aside a judgment procured through fraud, also see the judicial guidance provided in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, **322 U.S. 238, 64 S.Ct. 997 (1994)** and *Truitt v. Truitt*, **383 So. 2d 276 (Fla. 5th DCA 1980)** and *Whitman v. Whitman*, 532 So.2d 82 (Fla. 3d DCA 1988) and relevant cases cited therein, including *United States v. Throckmorton*, **98 U.S. 61, 66, 25 L.Ed. 93, 95 (1878)**.

Lon Jr's legal briefs, memorandums of law, affidavit testimony, interrogatory testimony, and verify complaint provided substantial valid evidence to show that his complaints were responsible complaints and it was an abuse of discretion for the trial judge to claim that all of Lon Jr's complaints were frivolous (against Defendants Tito Smith, Larry and Leona Willoughby.

The voluminous record on appeal clearly shows that Lon Jr's complaints had a solid legal basis and had a solid evidential basis. Therefore, it was error the trial judge to use summary judgment to dismiss Plaintiff Lon Jr's valid complaint and then rule that Lon Jr's complaints were frivolous. **R10**-246,248,250, 252,254,263,265, 291,292. See relevant legal standards cited in Lon

Jr's motion for reconsideration and memorandum of law (**R12**-301,302 regarding Order **R12**-297.

For the reasons reported herein, it was an abuse of judicial discretion for the trial judge to ignore the valid evidence and citations of relevant legal standards presented by Lon Jr. regarding the validity of his complaints against Defendants Tito Smith, Larry and Leona Willoughby.

The record on appeal clearly proves that the trial judge erred when he ruled that Plaintiff Lon Jr's **Complaint(s)** against Defendants Tito S. Smith, Larry M. Willoughby, and Leona S. Willoughby, were frivolous complaints. (**R12-297**)

WHEREFORE, in the interest of justice, the summary judgment must be reversed.

VI. THE U.S. MAGISTRATE JUDGE AND THE TRIAL JUDGE ERRED WHEN THEY COLLECTIVELY FAILED TO PROVIDE PLAINTIFF LON JR. WITH A FAIR AND IMPARTIAL JUDICIAL FORUM FOR CIVIL LITIGATION OF MONEY DAMAGE ISSUES (JURY TRIAL ISSUES) AGAINST DEFENDANTS.

The argument contained in **Issue I, II, III, IV, V** are adopted and incorporated herein verbatim to provide argument for this issue.

There is no need to burden the appellate panel further with additional discourse regarding this argument. From the foregoing incorporated arguments, it is very clear that the magistrate judge and the district judge systematically cooperated with the unfair and unethical litigation tactics being used against nonresident pro se Plaintiff Lon Jr. and thereby failed to provide a fair and impartial judicial forum for the diversity of jurisdiction litigation. **R3**-137 Therefore, the litigation

process was fundamentally and fatally flawed. It is clear that fundamental error occurred.

The record on appeal cited herein by reference to previous arguments shows clearly that the district judge and the U.S. Magistrate Judge abused their judicial authority and discretion on numerous occasions and collectively failed to provide Plaintiff Lon Jr. with a fair and impartial judicial forum for civil litigation of money damage issues (jury trial issues) against the defendants.

WHEREFORE, in the interest of justice, all judgments entered against Plaintiff Lon Jr. must be reversed.

VII. THE TRIAL JUDGE ABUSED HIS JUDICIAL DISCRETION WHEN HE REPEATEDLY REFUSED TO TAKE ANY RESPONSIBLE ACTION TO INITIATE AN FBI INVESTIGATION OF PLAINTIFF'S STRONGLY SUPPORTED, WELL DOCUMENTED ALLEGATIONS ABOUT MULTIPLE CRIMINAL ACTS BY FLORIDA ATTORNEYS AND/OR JUDGES.

The argument contained in **Issue I, II, III** are adopted and incorporated herein verbatim to provide argument for this issue.

The record on appeal cited in the incorporated argument shows clearly that the trial judge abused his judicial discretion when he repeatedly refused to take any responsible action to initiate an FBI investigation of Plaintiff Lon Jr's strongly supported and well documented allegations about multiple criminal acts by officers of the Florida court(s) which clearly obstructed justice in the instant district court litigation and simultaneously violated in a criminal manner Plaintiff Lon Jr's

federally protected and secured civil rights (18 U.S.C. 241).

WHEREFORE, for the reasons reported herein, and in the interest of justice, the dismissal of the plaintiff's complaints against the five defendants must be reversed.

CONCLUSION

For the reasons shown herein, and in the interest of justice, Appellant Lon Jr. respectfully moves this honorable appellate court to grant the relief requested in each argument issue and thereby reverse all judgments against Plaintiff Lon Jr. and remand the case for a new trial under a a different judge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing **Appellant's Brief**, with one copy of **Record Excerpts**, will be furnished by U.S. Mail to each of the following attorneys: **Robert A. Cole**, 76 South Laura Street, Suite 1700, Jacksonville, Florida 32202; **Alan B. Fields, Jr.**, Post Office Box 1888, Palatka, Florida 32178; and Victor M. Halbach, Jr., Susan Smith Erdelyi, and Alan K. Ragan, Post Office Box 447, Jacksonville, Florida 32201, on the 4th day of December, 1996.

Lonnie E. Willoughby, Jr., Appellant *pro se*
307 Poplar Lane
c/o Post Office Box 127
Mauldin, S.C. 29662-0127/TDC
Telephone/Fax: (864) 288-8924

Appendix D

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA.

Case No. 89-5224-CA-M

LEONA WILLOUGHBY,

Plaintiff,

vs.

LONNIE E. WILLOUGHBY, JR., as Trustee of the LONNIE E. WILLOUGHBY, SR. TRUST AGREEMENT DATED JANUARY 1, 1983,

Defendant.

FINAL JUDGMENT

THIS MATTER having come on to be tried before the Court and the Court having considered the testimony of the witnesses together with their demeanor and attitudes toward one another and the Court having further reviewed all of the depositions, pleadings, exhibits and evidence, makes the following findings:

a. That the Court has jurisdiction of both the subject matter and the parties to this cause.

b. That although both Plaintiff and Defendant had filed several motions addressing the pleadings of the other, none of these motions were called for hearing until the day

of trial and this cause had been continued previously to allow the pleadings to be clarified; certain of these motions were moot, and all of the party litigants want the case tried and concluded.

c. That the Plaintiff, LEONA WILLOUGHBY, and her deceased Husband, LONNIE E. WILLOUGHBY, SR., had through their joint efforts, accumulated a joint estate that gave rise to a concern by them for estate tax consequences. It was their intent to divide their jointly held estate so that each held fifty percent and it was the Settlor's (LONNIE E. WILLOUGHBY, SR.) intent in creating the Trust dated January 1, 1983, and amended December 12, 1984, to create a marital trust and a family trust so that the Settlor's widow, the Plaintiff herein, and his two sons each received one-third of his separate estate. The amendment specifically provides for the Marital Trust to receive thirty-four percent and the Family Trust the balance of sixty-six percent of the total trust assets. The intent of the Decedent and his Widow, the Plaintiff herein, was never accomplished, however, in that the estates were never equalized, the bulk of the jointly held estate being placed in the Decedent's Trust, and as result of the Defendant's improper interpretation of the Amendment to the Trust, the Plaintiff has only received twenty-seven (27%) percent of the Trust Income since her Husband's death.

d. That although the Defendant, LONNIE E. WILLOUGHBY, JR., believes that he is extraordinarily knowledgeable in the areas of trust administration, estate taxes and probate, he represents the classic example of a little knowledge on a subject being a dangerous

thing. His attitude, demeanor and presentation clearly demonstrate an uncompromising individual who has interpreted the Trust and exercised his discretionary determinations in a fashion that is most beneficial to himself.

e. Both the Defendant and his Co-Trustee, LARRY M. WILLOUGHBY, as vested remaindermen of the Marital Trust with significant discretion as to distributions of principal from the Marital Trust to the Plaintiff, have a conflict of interest in making such determinations.

f. The Amendment to the Trust dated December 12, 1984, which was proposed, drafted and prepared by the Defendant, specifically directs the Trustees to make non-discretionary distributions of all income in the Marital Trust to the Plaintiff, and the Co-Trustee failed for approximately one year or until the Plaintiff initiated this litigation to make such distributions. Such actions by the Trustees constituted abusive and arbitrary mismanagement of the Trust as well as a breach of their fiduciary responsibilities to the Trust and the Plaintiff as an income beneficiary.

g. That the Defendant is entitled to reasonable compensation for services as Trustee, but the amounts set forth in the invoices submitted by the Defendant to the Trust are unwarranted and outrageous in that the vast majority of the Defendant's time, as billed, did not involve matters relevant to the Trust, but rather, addressed his personal relationship with his Brother and Mother. This Court further finds that for the services necessary from the Trustee, a fee of $250.00 per month from January 1987 through August 1989, or a

total of $8,000.00 is more than generous. The Cross-Defendant, Co-Trustee, LARRY M. WILLOUGHBY, has requested no fees.

h. That the Defendant's testimony and evidence as to damages against the Trust and his Co-Trustee are so remote, conjectural and speculative that the Court can give them no credence.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

1. That all of the Motions, both Plaintiff's and Defendant's, called for hearing on the day of trial be and they are hereby denied.

2. That the Co-Trustees, LONNIE E. WILLOUGHBY, JR. and LARRY M. WILLOUGHBY, be and they are hereby removed as Trustees of the LONNIE E. WILLOUGHBY SR. TRUST.

3. That the Trust shall pay from its principal the sum of $8,000.00 to LONNIE E. WILLOUGHBY, JR. for his services as Co-Trustee.

4. That LONNIE J. STANLEY, CPA of 3000 Crill Avenue, Palatka, Florida, 32177, is hereby appointed Successor Trustee and upon his submitting a surety bond conditioned upon his proper performance as Trustee in the sum of $100,000.00, and said bond being approved by this Court he shall assume the duties of Trustee. The premium for said bond shall be a trust expense.

5. That all financial institutions holding accounts for this Trust are hereby notified of this change in Trustees and are directed to alter their accounts accordingly.

6. That the Trustee shall alter all accountings to reflect a division of trust ownership so that the Marital Trust contains thirty-four percent of the total assets and the Family Trust contains the balance with distributions made accordingly. Additionally, the Trustee shall calculate and pay to the Plaintiff from the Trust Principal seven (7%) of Trust Income since the Settlor's death.

7. That on the Defendant's Counter-Claim for damages against the Trust and Cross-Claim against his Brother, LARRY M. WILLOUGHBY, the Defendant, LONNIE E. WILLOUGHBY, JR., shall take nothing and the Counter-Defendant and Cross-Defendant, shall go hence without day.

8. This Court retains jurisdiction of this cause to determine what, if any, attorney's fees should be paid by the Trust.

DONE AND ORDERED in Chambers, Putnam County Courthouse, Palatka, Florida, this 12th day of October, 1989.

s/ Robert R. Perry
Circuit Judge

Copies to: Tito S. Smith, Esquire
Alan B. Fields, Jr., Esquire

S/ Jill F. Gale
Judicial Assistant

Appendix E

CONSTITUTION OF THE UNITED STATES

Article IV - RELATIONS OF STATES

Section 1. Full Faith and Credit

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. Privileges and Immunities of Citizens

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

AMENDMENTS

First Amendment: Freedom of Religion, Speech, Press, Assembly, and Petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fifth Amendment:

No person shall . . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix F

FLORIDA STATUTES (Trust Administration)

737.302 Trustee's standard of care and performance. - Except as otherwise provided by the trust instrument, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent trustee dealing with the property of another. If the trustee has special skills, or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

737.402 Powers of trustee conferred by this part. -

(1) From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsection (2).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(a) To collect, hold, and retain trust assets received from settlor until disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested.

(s) To Borrow money, to be repaid from trust assets or otherwise, and to advance money for the protection of the trust and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets,

for which advances, with any interest, the trustee has a lien on the trust assets as against the beneficiary.

(u) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

(y) To employ persons, including attorneys, auditor, investment advisor, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties.

(aa) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

737.404 Powers exercisable by joint trustees;

(1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees if he expressed his dissent in writing to any of his cotrustees at or before the time of joinder.

(2) If two or more trustees are appointed to perform a trust and any of them is unable or refuses to accept the appointment or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a co-trustee from liability for failure either to participate in the
administration of the trust or to attempt to prevent a breach of trust.

738.02 Duty of trustee for receipts and expenditures.

(1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen.

738.13 Charges against income and principal.

(1) The following charges shall be made against income:

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise.

(2) If charges against income are of unusual amount, the trustee may charge them over a reasonable period of time, by means of reserves or other reasonable means, and withhold from distribution sufficient sums to regularize distributions.

Appendix G

TRIAL TRANSCRIPT (FIRST TRIAL 9/6/89)

SELECTED SECTIONS

1T. 41: Questions by Tito Smith, answers by Lon Jr

A: Would you repeat the question. please?

Q: Certainly, The assets belonging to your dad that were in this trust, placed into two separate trusts, a family trust and a marital trust. The income from the marital trust being paid to your mother together with the right to invade the corpus of that trust.

A: Yes.

Q: The income off of the family trust paid to Mama as well, but with no right to invade that corpus whatsoever, only a lifetime right to income.

A: And to answer the question, would that have avoided the estate taxes?

Q: Um-hum.

A: And the answer to that is yes, it would have avoided the estate taxes.

Q: Could you tell me why we decided to draw it in this fashion so that Mama doesn't get the income, you and your brother get the income?

A: Well, there were several reasons?

MR. FIELDS: Your Honor, I don't know where this line of questioning is going. Are we trying to uphold the trust or are we challenging the trust instrument itself? I

understand the allegations are that Mr. Willoughby is mismanaging the trust. It sounds to me like this line of questioning is going behind, challenging the enactment of the trust.

THE COURT: Go ahead.

MR. SMITH: We're not trying to break the trust, but we're coming to a point in a moment that I think will lead to a mismanagement area.

THE COURT: Well, Mr. Fields, let's see where this leads us.

MR. FIELDS: All right, sir.

(Note: the next ten pages (1T. 42-51) are about the estate planning techniques used in the "Second Amendment" to the Trust Instrument.

1T. 111: Questions - Tito Smith,
Answers - Leona

MR. FIELDS: Your Honor, may I again object. I don't know what we're going into, if we're challenging the trust or if Mrs. Willoughby wants to set aside the trust, or if she's trying to say Mr. Willoughby is not functioning properly under the trust.

THE WITNESS: I'm not doing either of those, sir.

MR. FIELDS: Seems to me they're challenging the trust.

MR. SMITH: Your Honor, we're not challenging the trust. The point I'm trying -- what I'm trying to do is portray a portrait for the Court of the actions of the defendant in this case, how he has orchestrated things and what he has done and what it's led to.

THE COURT: I'm aware to the point. The objection is overruled. If there was one

with a legal basis. I didn't hear one.

MR. FIELDS: Immaterial, irrelevant to the pleadings and to the accusations here today.

1T. 162-163: Questions by Tito Smith, Answers are by CPA Lonnie Stanley (CPA who did the Form 706 Estate Tax Report for Lon Sr's estate and also does Leona's federal tax returns, since 1985).

Q: Based upon, again, your representation of the Willoughbys and your understanding of the trust, why was it, did you believe, that this trust was executed? What was the objective of the trust?

MR. FIELDS: Your Honor, I object. I don't think this witness has any expertise to explain the trust. I think the trust speaks for itself.

MR. SMITH: The trust speaks for itself. He certainly can say what he understood based upon
representations by his clients, their objective was with the trust.

MR. FIELDS: One, I think would be the dead man's statute and as to Mrs. Willoughby, I don't know. But I think we'd have to see what those representations were.

THE COURT: I'll overrule the objection. But don't give him the dead man's testimony. Don't tell me what -- the dead man's statute doesn't apply to him. He's not interested in this.

MR. SMITH: That's correct, Your Honor.

THE COURT: Overrule the objection. Go ahead.

MR. FIELDS: May I inquire for voir dire? If we're going to give an expert opinion, I suppose.

THE COURT: I don't know that he's giving an expert opinion.

MR. SMITH: I haven't asked that he be qualified as an expert.

MR. FIELDS: May I just ask a couple of questions?

THE COURT: If he's not giving an expert opinion, I don't think -- and he hasn't been submitted to me as an expert yet.

MR. FIELDS: But I object to any testimony of this witness relating to this trust based upon what people told him. Number one, it would be self-serving from Mrs. Willoughby's standpoint. Number two, it he's going to explain what the trust was meant to be, he is not qualified, he's incompetent to do that. Number three, there has been no predicate to show that he had any knowledge of the trust before it was executed as to what was their intent.

THE COURT: Objections is overruled. Go ahead.

BY MR. SMITH:

Q: What was your understanding of why your clients executed the trust?

A: My understanding was that they wanted to avoid probate and estate taxes.

Q: All right, sir. Did the trust accomplish this?

A: The trust accomplished that, yes, sir.

Q: It accomplished the avoidance of probate?

A: Yes, sir.

Q: Did it accomplish the avoidance of estate taxes?

A: Yes, sir, there were no estate taxes paid.

1T. 166-168, Questions by Tito Smith, Answers are by CPA Lonnie Stanley

Q: When you prepared the 706, who retained you to file that document?

A: Lonnie Willoughby, Jr., and Mrs. Willoughby. (Note error: it was Larry and Leona)

Q: And in doing so, I understand that you had an opportunity again to review all of the trust documents and you were familiar with this document, the amendment to the trust?

A: Yes, sir.

Q: In preparing the 706, how much of what percentage was allocated to Mrs. Willoughby of the trusts assets?

A: On the 706, the marital trust was allocated at approximately 27% of the entire asset value.

Q: All right, sir. Let me direct your attention to the paragraph on the face page of that amendment to the trust where it recites that a trustee shall insure that at least 34% shall go to their trust, or words to that effect.

A: I believe it says in apportioning to the marital and family trust specific assets previously valued for estate tax purposes, the trustee shall assure that my husband receives at least 34%. This is Leona Willoughby's trust.

Q: I'm sorry. I'm showing you Mrs. Willoughby's.

MR. FIELDS: Your Honor, may I object again. We're getting outside of the pleadings in this case. We're attempting to, one, to enforce the terms of the trust, and that we now

again seem to be attacking the trust instrument itself.

MR. SMITH: Your Honor, we're not attacking -- excuse me. Go ahead.

MR. FIELDS: I don't know where we're going. We're trying to get something that's certainly outside of the pleadings and I don't know where -- I think I know where it's intended to go, but that's certainly not in the pleadings of what I understood we would be here for. Now we're starting to attack the instrument and how it was planned or what it does. I think it's been pretty well universally testified to so far, that's what was done and that was the intent of the settlor.

MR. SMITH: I don't agree with this --

THE COURT: The objection boils down to materiality to these issues, is that it?

MR. FIELDS: Yes, sir, materiality and relevancy, and also as to the parole evidence rule. We're attempting to avoid this instrument by explaining it with people who are not a party to it.

MR. SMITH: Your Honor, what we're trying to do is show mismanagement on the part of this gentleman as a co-trustee. And part of that mismanagement is that he decided unilaterally it's going to be 27% and not 34%, regardless of what Daddy said and regardless of what the instrument that he drafted said. And I'd like for this CPA to testify to that.

THE COURT: Objection is over ruled. I can see the materiality and the relevance.

BY MR. SMITH:

Q: Why, Mr. Stanley, did you in the 706 reflect 27% or allocate 27% of the trust assets to Mrs. Willoughby as opposed to 34% that this document recites?

A: When we prepared the 706 or in the preparation of it and my conversations with Lonnie Willoughby, Jr., we allocated that based on what he had explained to me was the interpretation of this paragraph in the trust. Which, what it ended up being is that we had taken 34% of the net value, the gross estate minus the estate expenses, and then from that we subtracted one-half of the jointly held property that Mr. Lonnie Willoughby, Sr., and Leona Willoughby owned. And that ended up arriving at that 27%.

Q: All right, sir. Have you had an opportunity subsequent to that time to review this?

A: Yes, sir, I have. I believe that we erred in that calculation. The trust calls for 34%, and down here at the bottom, the part I think that had created the confusion, was a reference to Florida Statutes 732.207, 732.208. I have discussed this with another attorney looking for an interpretation of what do those chapters really mean. And my understanding after that conversation was that the 30% referred to in those chapters is subject to assets that are solely in the name of the individual, consequently we should not have reduced the 34% by one-half of those assets.

Q: All right, sir. And based upon your understanding of the law and the language in that trust now, what percentage of the income from the trust should she be receiving?

A: She should be receiving 34%.

Q: And she should have been receiving it since its inception?

A: Yes, sir, I believe she should have been receiving it since its inception.

Q: And to your knowledge what has she received?

A: To my knowledge, she has received income based upon 27%.

1T. 171: Questions by Tito Smith, answers by CPA Lonnie Stanley

Q. Do you still continue to represent Mrs. Willoughby as a CPA?

A Yes, sir, I do.

Q: And you've had discussions with her relative to this trust?

A: Yes, sir, I have.

Q: And you're doing her income tax returns now?

A: Yes, sir, I am.

Q: Can you testify from your experience having prepared those returns how her income has been affected since her husband's death?

A: Well, the first return that I prepared for Mrs. Willoughby was a joint return for 1985, and on the joint return her income was approximately $75,000. That was prior to Mr. Willoughby's death. Since that return, the income has diminished each year. Her 1988 return was approximately $20,000 in income.

Q: And that included the income from the trust?

A: Yes, sir , it did.

Q: Have you had the opportunity to -- of course, you've done her income tax return. Have you had an opportunity to prepare financial statements for her? Have you ever done that?

A: No, sir, I've never done that. You know, I'm somewhat familiar with her assets,

but we've never prepared balance sheets and compared those.

Q: Have you prepared anything like a P & L? Anything showing what her income in and what her outgo is?

A: The only things that I prepared are her tax returns in that regard.

Q: In doing that, preparing those tax returns though you review, do you not, the expenditures?

A: Yes, We have reviewed her expenditures.

Q: Based upon that review, does it appear to you as though she is expending more monies than she's receiving?

A: Depends on which year we refer to. In 1987 she expended more money than what she received . In 1988, I would have to -- I'd have to refer back to it. There was period there where she did not receive as much income, and during that time she definitely was expending more money. Now she probably is very close to a break even proposition until we get into 1989 and now her income is down again, and I think that she probably is expending more money than her income. She probably is eating into her assets, yes, sir.

Q: And did you do any calculations at her request to determine what it would take in the form of income from the trust to maintain her on an even keel?

A: Yes, sir, I did.

Q: And what was that figure?

A: Approximately $2,000 a month.

1T. 181: CPA Lonnie Stanley still on witness stand.

THE COURT: Mr. Stanley, before you go, two things. If I understand correctly, the tax consequences, that is, the savings of the estate taxes would have been effective upon the first 1983 trust. That is the savings of taxes in both his and her estate?
THE WITNESS: Right. The trust, in essence, by simply passing on the first death over to beneficiaries being the sons would have accomplished the same thing by reducing Mrs. Willoughby's estate below the unified credit. In other words, not allowing that to pass over.
THE COURT: So the second trust had no effective tax consequences with regard to the estate tax?
THE WITNESS: I think that's correct, yes, sir. In regard to the estate taxes.
THE COURT: And it was not necessary to effect -- to have the second trust in order to save all the taxes You're going to save?
THE WITNESS: I believe that's correct, yes, sir.

1T. 185: Plaintiff concludes argument.

THE COURT: Plaintiff rests. Mr. Fields?
MR. FIELDS: May it please the Court. Your Honor, at this time I would like to ask for a dismissal of the complaint based upon the following basis.

Number one, this is, I think agreed upon. This is a spendthrift trust. And based upon the law, as I understand it, that in the spendthrift trust it is set up on the basis that --
THE COURT: Do you agree it's a spendthrift trust?
MR. SMITH: No, Your Honor. He tends to, I don't.

MR. FIELDS: Well sir, I don't have any doubt in my knowledge that this is a spendthrift trust. It quacks, it barks, it does everything like a spendthrift duck barking trust. It. prohibits the individuals from anticipating income, it prohibits the trustees -- I mean the beneficiaries from a creditor attaching. It also prohibits the beneficiary from any say so in its organization or management. It is a trust. It is a spendthrift trust. And based upon the law, as I understand it, in 54 Am. Juris., Trusts, Section 128, removal of trustee, and University of Miami law Review, 540, number 1985, and Florida Law of Trust by Lowell and Grimsley, Section 4-3, that the beneficiaries may not bring an action to get rid -- to remove the trustee of a spendthrift trust.

****** Now I think we've tried to go beyond everything in this matter as to what happened in this amendment to the trust, but I think there is any doubt that is what the intent of the settlor was. Regardless of everything he's trying to do to attack this trust.

Now in accordance with the Fifth District (Court of Appeals) in Parr versus Cushing, 507 So 2d 1227, it's very specific as to an express trust. And quoting on page 1228, "generally removing a trustee should be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the trust." What we have here has been a difference of opinion between the co-trustees. There is nothing shown as to actual mismanagement of the trust, and I think that Mrs. Willoughby admitted that. Specifically, I know she's done that on the interrogatories.

Under the case of Bacon versus Martin, 518 So.2d 925, a Third DCA case, we relate to

the statute that we've been speaking of in the trust administration statute. And that case says that this is a -- the statute is in derogation of the common law, and where the statute does not provide, then you go to what was the intent of the settlor. And the settlor said in this case that remuneration can be paid to the trustee. The settlor had said that the trustee, trustees, whichever, can consider in net income their expenses prior thereto. And what you had here was a question amongst the two trustee, when they started getting along, then one says well, I don't like what you're doing. ********

Now all we've had here so far is attempts to set aside, to vacillate from the trust instrument itself. There is nothing showing that Mr. Willoughby, Lon Willoughby as co-trustee, varied from the provisions of that trust. It gives him discrimination, it gives him discretion, it gives the other trustee. The fact that they won't work together is not the issue. That does not make mismanagement.

Your Honor, the cases that I've cited, I don't think there has been enough evidence to show at this point that Mr. Lon Willoughby has mismanaged this trust.

1T. 191: After Tito Smith's rebuttal of Alan Fields' motion to dismiss.

THE COURT: Motion is denied. Are your ready?
MR. FIELDS: Yes, sir.
MR. Fields called Lon Jr. as his first witness.

1T. 199: Lon Jr. still testifying.

Q: You've heard what Mr. Stanley had to say about the taxable event of the original trust, the amendment?
A: Yes, sir.
Q: No. sir.
Q: Would you please explain?
A: Mr. Lonnie Stanley is totally wrong, and this is one of the great problems in estate planning. It is extremely difficult to find anyone who knows what they're doing. Everybody has got an opinion, but almost nobody has researched it thoroughly enough to be accurate.
Q: Please tell the Judge wherein Mr. Stanley is wrong.
A: Okay, Well, If I understood his testimony, and again, it's difficult to get in his head and understand what he meant to say, but if I understood his testimony, he said that the first trust that my mother and father had would have effected the same tax savings as we had with the amendment. And that's totally wrong.

The first trust my mother and father had would have effected no estate tax savings, if we had just left that trust in effect the way it was in effect prior to us making the second amendment, other than the fact that the amount of cash that had been put into my father's estate would have gotten involved in those trust calculations. But the bottom line of it is, on the original trust everything in my father's estate would have passed into my mother's estate.

Now Mr. Lonnie Stanley was correct that there would be no estate tax upon my father's death and there would be no probate upon my father's death simply because those cash assets that we had put in the original trust would have

passed to my mother under the original trust, through the trust, outside of probate. The other assets that would have been passed outside the trust upon my father's death would have avoided probate simply because they were joint assets and would have passed to my mother as the remainder of the two jointly owned -- joint owners. So we would have avoided the probate upon my father's death in either case.

But that's not the thing that's important. What's important is what do you finally do when everything is accounted for? The final accounting comes when the second of those two joint owners dies. That's when the IRS calls in and wants their money for estate taxes. And that's when the estate would have had to be probated for all assets that were outside the trust, as there are substantial assets outside this trust currently.

So it's not enough to look at it in the beginning stages, you have to look at the final stage to determine the proper estate planning. And in that respect, Mr. Lonnie Stanley's testimony was very misleading, as far as it went.

1T. 212: Lon Jr. testifying.

BY MR. FIELDS:
Q: Mr. Willoughby, in accordance with my request in preparation for today, have you prepared a services report, a synopsis, of your activities relating to this trust and your problem with your co-trustee and the other beneficiary?
A: Yes sir. I tried to prepare what essentially is a brief summary.

Q: Is this the document?
A: Yes sir, it is.
Q: If I can ask you to be , again, brief and summarize this more briefly -- Your Honor, I'd like to have this entered, his summary.
MR. SMITH: If it'll save time by introducing this, that's fine.
THE COURT: Any objection?
MR. SMITH: None, Your Honor.
THE COURT: Mark it.
MR. SMITH: I think it'll save time.
THE COURT: Be number nine.
(THEREUPON, the document was marked as Defendant's Exhibit Number Nine by the Clerk)

BY MR. FIELDS:

Q: Now, Mr. Willoughby, I asked you if you could please be even more brief than that and tell the Court essentially of the problems which faced you and why you considered that it was time that you charged your co-beneficiaries and yourself with the fee and what fees were charged.
THE COURT: Is this included in the summary? Is this included in the summary?
MR. FIELDS: I'm just asking -- I think it is, Your Honor.
THE COURT: Well, if I'm going to read the summary, do I have to listen to this again? Which one do you want me to do?
MR. FIELDS: Read the summary, Your Honor.

BY MR. FIELDS:

Q: Mr. Willoughby -- forget what all is in that -- did you include that in your research into fees charged by trust departments?

A: Is that written in the summary?
Q: Yes.
A: I honestly do not recall. I don't believe it is.
Q: Well, I don't believe it is. Can you please tell us then what if any research you have done in order to ascertain what the corporate trustee in the southeast would charge for the services of managing this trust?
A: Yes sir. In Jacksonville, Florida, I have met with trust officers for Barnett Bank, First Union Bank, First National Bank of Florida, Sun Bank, and I have acquired from NCNB Bank in South Carolina, the fee structure for NCNB Bank of Florida. And I discussed with those four bank trust officers in detail, some of those discussions lasted an hour with just one bank. We went into great detail about what their charges would be under numerous circumstances including management of the Penn Oaks Apartments in DeLand, etc.
Q: Based upon that research, were you able to ascertain what it would cost you and your co-beneficiaries of these trusts for a corporate trustee to manage this trust in lieu of yourself?
A: Yes sir. I can summarize that very briefly. Two banks charge the lowest fees. One of those is Barnett Bank and the other one is First National. Or Florida National. I'd have to look at the records to be sure whether it's First National or Florida National, but in any case, I can tell you what the lowest rate is. The lowest rate is 1% of the gross net asset value of all trust assets.

So if the trusts' gross value is, well say, sixty-five, $650,000, then they charge a 1% fee per year to manage those assets. In other words, that would be $6.500. But because this is a living trust that currently has co-trustees, if they were to begin managing that they charge -- all of those institutions, all five of them, insist on charging what's called an assumption fee and for most of those that is a 1% fee also. So they would charge $6,500 just to start.

Then they charge another $6,500 per year and most of them want this paid on a quarterly basis. Now when I say paid, they automatically take it out of the trust. They don't have to wait and get a check for their services the way I'm still waiting to get a check for mine, for all of my fees. I've never been paid. They automatically take it out up front before the beneficiaries receive anything. And then whatever the net income is after their fees, then the beneficiaries are paid on whatever terms are established in the trust agreement. Whether it be monthly or quarterly.

Q: After you ascertained that you were having sufficient problems, upon what basis did you discuss with your Brother that you thought you should now be paid for your services?

A: Well, I explained to him in my letter, which is dated in April of 1988, that I had tremendous problems with him, that he had failed to do his duty as a co-trustee even on the small, simple things.

Q: In what way do you think he's failed?

A: Well, at that point in time, I had been working on the trust tax returns for the tax year of 1987. This was in the spring of 1988. And he receives bank records from two banks

holding trust accounts. One from Security First Federal and one from First Union.

So as a result of them sending those records to him, and he and signed papers to the effect that they would send those papers to him, and then I received bank records on about seven accounts. He gets record on two, and I get them on seven. But on the two that he received, he also gets the Substitute Form 1099 which shows how much interest income that bank trust accounts has -- had reported to the Internal Revenue Service directly by the bank. Well, whoever does your tax returns needs that form in order to verify how much tax should be reported on that tax return from that account.

He had not sent me both of the 1099's Substitute 1099 Forms, that I needed. He had sent me one of them back in February of 1988. The other one had never come, so I wrote him and asked him to send it to me. I received that form 25 days after I mailed the tax return to him.

In addition to that, he was withholding my own personal checks, beneficiary checks. He had withheld those in December. He withheld them again in January of 1988. And we had several conversations in that regard.

Q: What explanations did he give you for withholding your beneficiary's checks?

A: He told me that under the terms of the trust he didn't have to pay me one dime unless I needed the money, and that I would get my checks whenever he felt like it.

And I explained to him very calmly that he and I both, as co-trustees, had a responsibility under this trust to distribute all the net income on a monthly basis. And that he was

supposed to sign those checks if they were in the right amount, and send them out to me just like he wanted me to sign the checks to Mother. He had no problem with sending the check to Mother, but he didn't want to send me my check because he was being very stubborn and very hard-headed, and he felt like -- that he had the right as a co-trustee to withhold my checks. And I explained to him that's not what the trust says. Both of us have a joint responsibility to distribute those net income checks if they're in the right amount or currently due. But I didn't get my check for a couple of weeks, and finally he decided -- as a matter of fact, I didn't get them for quite some time in December.

So he and I had another conversation in January when he called me, and he insisted at that point in time that I agree to pay off all of the funds that are in the trust, distribute those funds out, and do away with the trust as soon as the Penn Oaks mortgage note was paid.

Now what he was referring to was in the fall of 1987, the people who have the mortgage note on the Penn Oaks wanted to renegotiate with us the 12% interest rate. And we did not agree to lower that rate to 9% like they asked us to do. And so they went outside and tried to find someone else that would give them a second mortgage note at a better interest rate than 12%. And then they were going to pay off that balloon note.

Q: They wanted to discount it?

A: They wanted to discount it, and I had informed them that if they did that, there was to be a $26,000 penalty for paying it off prematurely that I had personally written into the sales contract so that they could not pay it off

within the first five years without that penalty. But they could pay it off after five years without penalty. This was within that first five year term.

So I reminded them, you have a penalty here if you want to pay it, but, of course, you've got a right to pay it off and get someone else to refinance the second mortgage. So all of that was going on, and we were reasonably confident that they were probably going to get financing, and so the Penn oaks mortgage not would be paid off either in the fall of '87 or sometime in '88.

Q: And your co-trustee then wanted to terminate the trust?

A: And in that phone conversation, which is a recorded conversation, which I have a tape of, he insisted that I agree right then and there on the phone that I would agree to distribute all the funds out of the trust as soon as that mortgage note was paid off, and that we would do away with these trusts, and that if I didn't -- and I told him, I said, look, it's not my practice as a businessman to make decisions before they need to be made.

I have a general rule. I make decisions in a timely manner when I think they need to be made. I don't make them weeks, or months, or years before they need to be made. And I said, "I'm not going to agree to do that at this point in time." I said, "We'll make that decision whenever it needs to be made. It does not need to be made today."

He got very adamant with me in that phone conversation, became extremely insulting, and this phone conversation went on for quite some time.

I tried to remain calm and cool and keep bring him back constructively to our responsibility as co-trustees as I had done numerous times in my letters to him, trying to help him maintain a responsible co-trustee position even though he himself wasn't familiar with what was in the trust.

He was quoting things out of the trust off the top of his head that were totally invalid. And he got very heated in the discussion, and he told me that -- he said, "I can't work anything out with you." He said, "You're worse than my Father ever was to talk to," and he went on and on and on.

Q: Was he attempting to do something that was contrary to the terms of the trust?

Q: Yes sir. There was nothing in the trust about paying off that mortgage note, and we'll terminate the trust, and we'll distribute all the income. These were demands that he was placing on me, totally outside of our responsibilities as co-trustees.

Q: Do you believe that you can maintain the trust in the best interest to all beneficiaries if you would remain the sole trustee?

A: Yes sir. I could maintain this trust very cost-effectively and efficiently if I did not have to contend with my Brother and if we could resolve my Mother's fears and doubts with regard to her income. And I think I can probably do that today in testimony.

Q: You're familiar with the law and you're familiar with the trust?

A: Yes sir. I am very familiar with it.

Q: Have you followed the dictates of them as far as you know?

A: To the best of my knowledge and understanding, I have followed these trust require-

ments and the Florida trust law, which I have -- as I testified earlier -- I've got copies of the Florida trust laws. And I have followed those as honestly and responsibly as I know how to do as a human being.

It has been a nightmare. It has cost me a ton of money out of my own personal life, but I do it because I understand this. The very first and most important responsibility as trustee is to allow nothing to interfere with him accomplishing his trustee duties.

MR. FIELDS: Thank you. I have nothing further.

1T. 249: Tito Smith's closing argument.

The point, Your Honor, that we're attempting to make is that the amendment drawn by Mr. Willoughby did one thing and one thing only, and that was - it added to his position. I don't believe that there was any tax savings, there was any changes as far as the Internal Revenue Service was concerned by the amendment. The only difference, the only significant difference being that instead of mama drawing the income off of that, those trust funds, now she only draws a percentage of it. A relatively small percentage of it.

Now I recognize the fact that one of the things the plaintiff has to prove in this case is mismanagement. And I think the law on that is relatively clear, and I would like to give the Court a number of cases on the law, some of which Mr. Fields referred to himself. I don't know if the Court wants copies of these or just citations, but I think that what we have to demonstrate is that the trustee has failed to

perform or has performed arbitrarily or has mismanaged this trust.

I think that the evidence clearly presents that. It clearly shows that. Particularly in two significant areas. One is that Lon decided when he interpreted the trust provisions that he had drawn upon Dad's death that we weren't going to put 34% into Mom's Marital Trust, we're only going to put 27% in there. And he did it with a rationalization obviously false now that this was saving taxes.

He, for whatever reason, never got the two estates, hers, Mrs. Willoughby's and Mr. Willoughby's equal, 50-50, as they had requested. And I think that if he had done that he would have achieved the settlor's objectives, which was to leave 50% of their joint assets to Mama, and one-third of 50% of those assets to Mama, one-third to each one of his two sons.

Even his expert will testify, and you'll see it when you read his deposition, that in fact 34% is the correct amount. The CPA has testified to that as well.

The other really more major in my mind area of mismanagement is when he decided unilaterally in 1988 after no fees having been charged and after making a statement to his Mom and his Dad to let your sons serve as co-trustees, we're grown men, we'll take care of you, and we won't charge you any fees like a bank would, now in 1988 he's decided that because he hasn't gotten along with his Brother for a while and he hasn't gotten along with his Mama for a while, he's going to start charging fees. He decided this unilaterally, and then he decided on top of that until his fees are paid, or as he calls them, administrative

expenses, then there is not going to be any income distribution.

Well, as a trustee you've got a fiduciary responsibility to your income beneficiary. And I think that he directly affected Mom's income and deprive her of her right to that income for a period of a year. And I think again the Court file reflects that when he made -- finally made that distribution in April of 1989, it was because he just got served with process in this case. If we hadn't instituted this litigation, this stalemate might continue. And who does the stalemate benefit?

It adds to the trust which are ultimately distributed upon Mom's death to the two sons.

I think that's clear, arbitrary mismanagement of the trust. I think what the testimony and the evidence has shown with respect to Lon Willoughby is a man that since he left the FAA has in some fashion or another lived off Mom and Dad.

He came down, he worked with the Penn Oaks Apartments. That's Mom and Dad's apartments. He made a living off of that. He made an income off of that. In addition, he received 30% of the proceeds when that was sold.

And that's continued today. And now at this point in time he's attempting to live off of the trust. The trust has clearly become an obsession with him. If your look at his files, you look at his documents, you listen to his testimony, he does nothing but attempt to be a trustee in this trust, trying to take care of Mama and Brother and himself.

And I think that he's allowed that position to cause him to get into a conflict of interest situation.

In other words again, the less money he can put in Mom's pocket, the more money he can put in his own. Now I'm not trying to say that Mr. Lon Willoughby, Jr., is a bad man, I'm just trying to say that that's the facts as we have them today. He's in a conflict of interest situation and I think he ought to be removed as trustee.

Appendix H

PAROL EVIDENCE REFERENCES

Black's Law Dictionary, Sixth Edition:

Parol Evidence Rule. This evidence rule seeks to preserve integrity of written agreements by refusing to permit contracting parties to attempt to alter import of their contract through use of contemporaneous oral declarations. Rose v. Food Fair Stores, Inc., 437 Pa. 117, 262 A.2d 851. Under this rule when the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake. Federal Deposit Ins. Corp. v. First Mortgage Investors, 76 Wis.2d 151, 250 N.W.2d362,365. But rule does not forbid a resort to parol evidence not inconsistent with the matters stated in the writing. Elkins. v Super-Cold Southwest Co.; Tex.Civ.App., 157 S.W. 2d 946, 947. * * * * *

This rule is also applicable to wills and trusts.

****

THE LAW OF TRUSTS (Scott), Fourth Edition

Section 38. The Parol Evidence Rule

Second paragraph: Under the parol evidence rule, if the manifestations of

intention of the settlor is integrated in a writing, that is, if a written instrument is adopted by him as the complete expression of his intention, extrinsic evidence, in the absence of fraud, duress, mistake, or other ground for reformation or rescission, is not admissible to contradict or vary it. (Federal) Estate of Craft v. Commissioner, 68 T.C. 249 (1977)

Section 164.1. The terms of the trust.

Second paragraph: In determining the terms of the trust, resort is had in the first place to the instrument, if any, under which the trust is created. As to any matter expressly covered by the instrument, the provisions of the instrument, if unambiguous, determine the terms of the trust. In such a case extrinsic evidence in the absence of fraud or mistake is not admissible to vary or add to the terms of the instrument.

England: In re Huxtable, [1902] 2 Ch. 793.

Federal: Commissioner of Internal Revenue v. McIlvaine, 78 F.2d 787 (7th Cir. 1935), affirmed sub nom.; Helvering v. McIlvaine, 296 U.S. 488, 56 S.Ct. 332, 80 L., Ed. 345 (1936); Petition of United States on Behalf of Smithsonian Inst. 485 F. Supp. 1222 (D.C. 1980) (quoting the text)

FLORIDA CASES:

When the terms of an instrument are clear and unambiguous there is no need for the court to construe the instrument. *** intent of settlor should not be determined by isolated

words and phrases, but, rather, the instrument as a whole should be considered and testator's general plan interpreted. First National Bank of Florida v. Moffett, 479 So.2d 312 (Fla. 5th DCA 1985)

It is the intention which the settlor expresses in the trust instrument which controls, not that which he might have had in mind when the trust was executed. Iles v. Iles, 29 So.2d 21 (1947)

*** the fact remains that the court was not entitled to rely on extrinsic evidence of the settlors' intent concerning an unambiguous trust instrument.

In construing wills and trusts, the intent of the testator or settlor should prevail and effect given to his wishes. Knauer v. Barnett, 360 So.2d 399 (Fla. 1978)

Appendix I1

DUE PROCESS CITATIONS
U.S. Supreme Court Cases

Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965); 14L.Ed.2d 62 (1965)

85 S.Ct. 1191 [6] A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

For the reasons stated, the judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Marshall v. Jerrico, Inc., 446 U.S. 238, 100 S.Ct. 1610, 64 L.Ed. 2d 182, (1980)

100 S.Ct. 1613: The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations

and the promotion of participation and dialogue by affected individuals in the decision making process. See ***Carey v. Piphus***, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252 (1978) At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," ***Joint Anti-Fascist Committee v. McGrath***, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Indeed, "justice must satisfy the appearance of justice.," **Offutt v. United States**, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652 (1950)

70 S.Ct. 656 [4] **** Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Page 657 [7] Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that "The fundamental requisite of due process

of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

Page 657 [8] An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, supra, and it must afford a reasonable time for those interested to make their appearance, Roller v. Holly, supra, and cf. Goodrich v. Ferris, 214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914.

Peralta v. Heights Medical Center, Inc., 108 S.Ct. 896 (1988)

Page 900: "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits" Coe v. Armour Fertilizer Works, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.E. 1027 (1915). As we

observed in Armstrong v. Manzo, supra, 380 U.S., at 552, 85 S.Ct., at 1191, only "wip[ing] the slate clean... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." The Due Process Clause demands no less in this case.

Bordenkircher v. Hayes, 98 S.Ct. 663, 434 U.S. 357, 54 L.Ed.2d 604 (1978) [3] To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, see ***North Carolina v. Pearce, supra***, 395 U.S., at 738, 89 S.Ct., at 2082 (opinion of Black, J.), and for an agent of the State to pursue a course of action whose objective is to penalize a persons's reliance on his legal rights is "patently unconstitutional." ***Chaffin v. Stynchcombe***, supra, 412 U.S., at 32-33, n. 20, 93 S.Ct., at 1986.

This protected right includes the right to petition a court (to provide a fair and impartial litigation process). ***California Motor Transport Co. v. Trucking Unlimited,*** 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed. 2d 642 (1972). This case shows at 92 S.Ct. 614 [10,11]: **If the end result is unlawful, it matters not that the means used in violation may be lawful.**

Appendix I2

DUE PROCESS CITATIONS

Florida Cases

Cull v. State,
570 So. 2d 1251 (Fla. 1990):

[2] Essence of due process is that fair notice and reasonable opportunity to be heard must be given to interested parties before judgment is rendered. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const. Amends. 5, 14.

[3] Due process envisions law that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const. Amends. 5, 14.

[4] Due process embodies fundamental conception of fairness that derives ultimately from natural rights of all individuals. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const. Amends. 5, 14.

Dodson v. Persell,
390 So. 2d 704 (Fla. 1980), pg. 706,707:

This court, as most jurisdictions, adopted discovery as part of our procedural rules to improve our system of justice. It is a tool intended (1) to identify at early stages of a proceeding the real issues to be resolved; (2) to provide each party with all available sources of proof as early as possible to facilitate trial preparation; and (3) to abolish the tactical

element of surprise in our adversary trial process. In Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1980) we stated that the primary purpose of our rules is to prevent the use of surprise, trickery, bluff and legal gymnastics. Revelation through discovery procedures of the strength and weaknesses of each side before trial encourages settlement of cases and avoids costly litigation. Each side can make an intelligent evaluation of the entire case and may better anticipate the ultimate results.

TRUST LITIGATION CASE:

Griffin V. Griffin,
463 So.2d 569 (Fla. 1st DCA 1985)

[1] Issues in cause are made solely by pleadings.

[2] Once issues have been fixed by pleadings, they may be changed only by stipulation of the parties, motion and order, or amendment express or implied to conform to evidence.

[3] In absence of motion to amend pleadings, trial court erred in ruling on trustees' obligations to minor trust beneficiary where that issue had not been raised in the pleadings and where timely objections alleging prejudice to efforts to interject evidence on issues of payments to that beneficiary had been made.

Hart Properties, Inc. v. Slack,
159 So. 2d 236 (Fla. 1963) states:

[3] Issues in cause are made solely by pleadings.

[5] Pleadings are intended to present, define and narrow issues and to form foundation of, and to limit, proof to be submitted on trial and objective sought is to reach issues of law and fact in one affirmative and one defensive pleading.

This purpose will not be served nor this objective achieved if operative issues, as distinguished from evidential issues, are allowed to be created outside the pleadings in depositions, admissions, affidavits, and the like, which may be filed in a cause. If this were allowed neither the parties nor the court would be able to say with certainty what the triable issues in a cause are.

[6] only instance in which legal issues not raised in pleadings may be decided is where issue, although not pleaded, is tried by consent of parties.

TRUST LITIGATION CASE:

Lamb v Jones,
202 So. 2d 810, 815-816 [6,7]
(Fla. 3rd. DCA 1967)

On page 816, this court refers to R.Civ.P. 1.15 (b) ***[1.190 (b) is current rule] *** and explains that when objection was made to new issue, and appellee proposed no amendments to the trial judge upon which he could make a ruling, the new issue could not be tried.

Appendix J

CONSPIRACY CASES

It is a federal crime for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or district in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. **Title 18, Section 241**, United States Criminal Code, "Conspiracy against rights". **(18 U.S.C.A. # 241)**

This section pertaining to conspiracy against rights of citizens encompasses due process and equal protection clauses of U.S.C.A. Const. Amend. 14 and is not unconstitutionally vague. ***U.S. v. Guest***, Ga. 1966, **86 S.Ct. 1170**, 383 U.S. 745, 16 L.Ed. 2d 239.

This section prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of this section, participated in by officials alone or in collaboration with private persons. ***U.S. v. Price***, Miss. 1966, **86 S.Ct. 1152**, 383 U.S. 787, 16 L.Ed. 2d 267.

Single conspiracy may have several purposes, but if one of them , whether primary or secondary, be violation of federal law, conspiracy is unlawful under federal law. ***Anderson v. U.S.***, W.Va. 1974, **94 S.Ct.** 2253, 417 U.S. 211, 41 L.Ed.2d 20.

Adickes v. Kress & Co., **398 U.S. at 176, 90 S.Ct. at 1618** (Justice Black's concurring opinion) states:

"The existence or nonexistence of a conspiracy is essentially a factual issue that the jury, not the trial judge, should decide. In this case petitioner may have had to prove her case by impeaching the store's witnesses and appealing to the jury to disbelieve all that they said was true in the affidavits.

The right to confront, cross-examine and impeach adverse witnesses is one of the most fundamental rights sought to be preserved by the Seventh Amendment provision for jury trials in civil cases.

The advantages of trial before a live jury with live witnesses, and all the possibilities of considering the human factors, should not be eliminated by substituting trial by affidavit and the sterile bareness of summary judgment."

United States v. Barrow, **363 F.2d 62 (3rd Cir. 1966)** states:

Proof of conspiracy may rest on indirect or circumstantial evidence; existence of conspiracy may be inferred from evidence of related facts and circumstances from which it appears, as reasonable and logical inference,

that activities of participants in criminal venture could not have been carried on except as result of preconceived scheme or common understanding. 18 U.S.C.A. # 371.

Fisher v. Shamburg, 624 F.2d 156 (10 Cir. 1980) states:

[6] Direct evidence of a conspiracy is rarely available, and existence of a conspiracy must usually be inferred from the circumstances.

[7] Summary judgment should not be used to prevent necessary examination of conflicting testimony and credibility in the crucible of a trial.

United States v. Torres, 720 F.2d 1506 (11th Cir. 1983) states:

[6] Proof of conspiracy may be by inferences from conduct of participants or from circumstantial evidence. Citing United States v. Ayala, 643 F.2d 244, 248 (5th Cir. 1981)

[7] Conviction for conspiracy requires no more than that defendant played minor role in total scheme. Citing United States v. Wilson, 500 F.2d 715, 724 (5th Cir. 1974), cert. denied, 420 U.S. 977, 95 S.Ct. 1403, 43 L.Ed. 2d 658 (1975).

Any conspiracy to deprive a person of any of his constitutional rights is reprobated. Martynn v. Darcy, D.C. La. 1971, 333 F.Supp 1236.

Kentucky State Bar Association v. Lester, 437 S.W.2d 958 (Ky. 1968) states:

Conspiracy conviction based on deprivation of rights under color of law justifies disbarment though offense is not a felony. 18 U.S.C.A. ## 242, 371.

Appendix K

TRUST ADMINISTRATION CITATIONS

The Restatement of the Law, Second, Trusts, 2d., Section 242 (page 605) provides a clear explanation of the trustee's compensation claim status. See **Paragraph 242 e.**:

Lien for compensation. The trustee need not pay over income without deducting the compensation to which he is entitled with respect to the income, and need not pay over principal without deducting the compensation to which he is entitled with respect to the principal. To this extent the trustee has a security interest in the trust property for his compensation.

Similar statements to that above are made in The law of Trusts, Scott, Section 242.3; Bogert, Trusts and Trustees, Sections 972, 974; **90 C.J.S.** Trusts, Section 406; and **76 Am Jur 2d.** Trusts, Section 523 - 534.

Smith v. Jones, **162 So. 496 (Fla. 1935)** Quotes from page 498:

[3] Courts of chancery have the inherent right, in dealing with trusts, to require payment out of the trust fund to the trustee, of all his necessary costs, expenses, and reasonable counsel fees for defending the trust estate, and in order that its decree shall be enforced, may declare a lien on the trust estate for such payment, and may also make provision for the sale of the trust property or so much thereof as may be necessary to pay the same. Bay Biscayne Co. v. Baile, 73 Fla. 1120, 75 So. 860.

[4] The general rule is that the expenses of properly administering trust are a lien on behalf of trustee for estate in his hands, and he will not be compelled to part with his control of estate until such expenses are paid. **Bay Biscayne Co. v. Baile, supra.**

Regarding reimbursement of attorney fees and cost for trust litigation, **"Scott On Trusts" (1939)**, shows longstanding trust administration policy: currently reported as **The Law of Trusts (Scott), Fourth Ed.**

Section 246, Liability upon contract: page 1422: * * * Where the trustee acting within his powers makes a contract with a third person in the course of the administration of the trust, although the trustee is ordinarily personally liable to the third person on the contract, he is entitled to indemnity out of the trust estate. If he has discharged the liability out of his individual property, he is entitled to reimbursement; if he has not discharged it, he is entitled to apply the trust property in discharging it, that is he is entitled to exoneration. Thus, where the trustee has properly employed an attorney in litigation affecting the trust estate, he may pay the attorney out of the trust estate, or if he has paid him out of his individual property, he is entitled to reimbursement out of the trust estate. If the trustee has acted properly in incurring the expense, he is entitled to indemnity even though it turns out that the trust estate is not benefited thereby. The mere fact that the litigation is unsuccessful does not preclude the trustee from obtaining indemnity out of the trust estate, provided that

he was acting within his powers in incurring the expense." [Emphasis added]

Additional guidance regarding trust litigation is provided by "**Restatement of the law, Trusts 2d**" Sections 178, 244, 245, 246, and 200 e., 194 a. (2nd para.), and 167, 251, 253, 254, 254 e., and 258. Also see **76 Am Jur. Trusts**, Sections 653 through 659.

90 C.J.S. Trusts, Section 232 states:

232 a. **In General:** Broadly speaking, the only ground for removal of a trustee is jeopardy to the trust or trust property. Some beneficial end must be achieved by removal of the trustee or it will not be justified. ** Trustees are not to be removed unless the facts disclose violation of the trust obligation or unsuitableness **. Unless the protection of the estate requires the court to displace a trustee, vested with a discretion by the creator of the trust, this should not be done. ** Some substantial reason must appear, and a trustee will not be removed at the mere whim or caprice of the beneficiary, *******.

232 c.(1) **Antagonistic and Hostile Relations:** A contingent remainderman will not be removed from trusteeship on the ground of adverse interest where he was designated trustee by the creator of the trust, but will be removed for adverse interest where not so designated. In re Weller's Estate, 108 N.E. 306, 267 Ill. 230

Shirk et al. v. Walker, 10 NE(2d) 192 (Mass. 1937)

[8] A trustee was not required to be removed on ground that he had become unsuitable because he had aroused permanent and justifiable hostility of income beneficiaries, where it was found, that one of income beneficiaries entertained some hostility towards trustee, trustee had no hostility towards such beneficiary, and his relations with other income beneficiaries had been friendly except as affected by bringing of suit.

[11] The existence of hostile feeling on part of beneficiaries towards a trustee does not relieve court of its duty to exercise its best judgment under all the circumstances.

[12] A trustee is not required to be removed because of hostile feeling of beneficiaries toward him, where such feeling does not interfere with proper administration of trust.

[9-12] (page 197) The facts established do not call for the removal of the trustee. There is no fraud or dishonesty. There is no incapacity or negligence which might indicate future peril to the trust property. There is a long record of faithful and efficient administration. The trustee has acquired a valuable experience of the renting capabilities of the building. At most there may have been a few errors of judgment or of law as to matters about which honest and intelligent opinions might differ, and these would be capable of easy correction and after a final decision of the court would not be likely to be repeated. In

such cases courts do not commonly remove the trustee, especially when he was selected by the original settlor and not by the court itself. ***Murdock v. Elliot***, 77 Conn. 247, 256, 58 A. 718; ***Crabb v. Young***, 92 N.Y. 56, 66 et seq.; ***Wylie v. Bushnell***, 277 Ill. 484, 505, 115 N.E. 618; ***Waller v. Hosford***, 152 Iowa 176, 130 N.W. 1093; ***Preston v. Wilcox***, 38 Mich. 578, 582; ***Wilson v. Smoot***, 186 Ky. 194, 199., 216 S.W. 129; ***Massey v. Stout***, 4 Del. Ch. 274; ***Smith v. Heyward***, 115 S.C. 145, 164, 105 S.E. 275; ***Nickels v. Philips***, 18 Fla. 732; **Am. Law Inst. Restatement; Trusts, Section 107 (a), comment f. Page 197:** There are many trusts in which no trustee could fully perform his duty without incurring the hostility of some of the beneficiaries. This case bears little resemblance to Comstick v. Bowles (Mass.) 3 N.E. (2d) 817.

Appendix L

MARION BEACHAM REPORTS

Selected sections from two affidavit reports; the first report, eight pages, dated August 22,1989, was presented at trial (9/6/89) and is in the appeal record; report dated October 20, 1989, eight pages, was presented with Lon Jr's Motion For Rehearing after the trial, and it is also in the appeal record.

Appendix L1

Affidavit Report, August 22, 1989

(Report written to Attorney Alan Fields, Jr)

Starting at Page 4, second paragraph:

In all my years, I cannot remember any situation similar to the one at hand where an individual trustee has worked as hard as Lonnie Willoughby, Jr. has with this trust. He had devoted an enormous amount of his time and talents to understanding complex fiduciary tax rules, estate tax laws, estate planning, Florida probate law, general fiduciary law, investments and the law of mortgages. He even has a working knowledge of the rules of civil procedure. All of these activities go far beyond what normal laymen would do if they were asked to serve as a trustee.

I think you would agree that Lon's allegiance to the trust and to his duties and responsibilities is extremely unusual. He takes

his job very seriously. Even though he is a family member, he has reached a point where I think it can be said that he has almost become detached from the emotions usually found in such relationships and elevated himself to an almost unbiased status, similar to what is usually the case when corporate fiduciaries serve as trustees. At the bank, we often have to make tough decisions when our discretionary judgment has to be exercised. How many of us could truly deal with our mothers in a totally unbiased fashion as Lonnie has often done?

All of Lonnie's work and detailed knowledge of the trusts and what needs to be done has gone unappreciated by Larry and Leona. Indeed, they appear to resent it and him. This trust has virtually been Lonnie's life for the past three or four years. Every step of the way, he has attempted to make well-reasoned decisions and recommendations to Larry and Leona. There is no one in my opinion, inside or outside of the family, who will ever have the intimate knowledge that Lon has gained about his duties and the purposes of the trust. This trust would not receive the kind of attention and diligence that Lon has given it from anyone else.

The complaint asks the Court to remove Lon because he stopped making income distributions to Leona. If the Court would allow it, I think that this bone of contention could easily be overcome by introducing evidence showing what assets Mrs. Willoughby has and her other sources of income. At this point and in her present circumstances, she would appear to be able to operate her financial affairs independently from the trust. I think Lon

acted responsibly in his actions in this regard even though neither Leona nor Larry agreed with him. This was a very tough thing to do but understandable to me if you properly assess the totality of the circumstances. He had to have an income reserve to make sure that there would be enough available to meet certain future expenses. This is normal trustee behavior as the majority of time an income beneficiary receives a "net" amount each month, which can either be a set amount based on projected income and expenses for a year's time for the trust or a variable amount which is distributed each month after that month's expenses have been deducted.

What Lon did or proposed to do should certainly not be considered unusual, abusive, or outside the scope of his responsibilities under the trust. Indeed, it would be quite embarrassing to have to approach a beneficiary about reimbursing a trust because the trustee did not retain sufficient funds to meet the trust's obligations. None of this was arbitrary or capricious on Lon's part.

The fiduciary tax returns are another area that has caused the rift between the trustee brothers to widen. Unless we happen to be working with a co-trustee who is also a CPA, almost without exception do we ever see any individual who has any idea about how these returns are prepared or what constitutes income or principal. Most of the time just knowing that a fiduciary must file income tax returns and when they are due is the extent of knowledge for most individual trustees. In the Willoughby situation, you have a trustee who has gone far beyond these bounds and learned

about an area of tax law that can be confusing and often times perplexing.
Lon, from the beginning, has acted fairly with all parties. He has kept them well-informed about trust matters. He has been diligent in upholding the purposes of the trust and preserving and protecting the trust principal. He is a man who has taken his job seriously. On the other hand, Larry has been much less attentive to the trust and, at times uncooperative. In what shape would this trust be in if Larry was the sole trustee? In my opinion, I think Larry would probably have done what most individual trustees do and that is, he would have relied on attorneys, CPAs and perhaps other investment advisors to "run" the trust for him and furnish the basic expertise to get the job done. I think that he would be the first to tell you that he would not have had the time nor would he have taken the time to absorb as much knowledge as Lon has over the past few years. I may be giving him the benefit of the doubt on this, but I have to believe that he would have been diligent enough to at least "farm out" these responsibilities as opposed to ignoring his responsibilities altogether.

One certain fact of life in all of this is that this trust is irrevocable and it will continue to exist for an indefinite period of time. It is an almost universal principle of law that a trust will not be allowed to fail for want of a trustee. In this case, you have one person who is truly willing and, without question, in my mind, able to do the job in an efficient, cost-effective fashion. He has an intimate familiarity with the assets and the terms of the trust. He has an excellent background in investments

and investment vehicles. He knows his mother's needs and what assets she has at her disposal. He is intensely serious about this whole matter. It would be an injustice to Lon to have him removed for doing what amounts to an incredible job, an incredible job the right way. I can say in all honesty that he has served faithfully and above reproach.

On the matter of compensation, it would be ludicrous to deny that Lon was entitled to compensation, so the only argument should be about the amount of compensation. This man has spent hundreds of man-hours in research, preparing documentation, and in dealing with the problems that have arisen. Rightfully or wrongfully, he has foregone opportunities to increase his own net worth just to immerse himself in the affairs of the trusts. Such devotion to duty is truly remarkable and extraordinary.

****

Page eight (final page)

In concluding all of this, I hope that what I have said will be of some value to the proceeding at hand. Even though I have personally only met with Lon, I have tried to be objective in this exercise. Lon has given his job a superhuman effort far beyond what most individuals would do under the circumstances. As near as I can tell, he has carried out his responsibilities extremely well under difficult circumstances. I have been absolutely amazed by the infinite amount of detail he has recorded. At this point, he has become well-versed in virtually every aspect of trust administration. He

has saved his family an enormous amount of money in tax savings in his orchestration of the set-up and administration of the trust. He has been zealously faithful to his father's wishes, and he has done his dead-level best to promote an understanding of all that is involved with his mother and brother. I hope the court will be supportive of his efforts and allow him to continue to serve as a trustee at fair compensation.

Please let me know if your have any questions.

s/ Marion Beacham, Jr.
Vice President and
Trust Officer

(NCNB Bank, Greenville, S.C.)

Appendix L2

NCNB
Greenville Trust Offices
P.O. Box 608
Greenville, SC 29602
Telephone 803 / 271-5803

October 20, 1989

Lonnie E. Willoughby, Jr.
307 Poplar Lane
P.O. Box 127
Greenville, South Carolina 29662

Re: Review of Willoughby Trial Transcript
September 6, 1989

Dear Lon:

As you requested, I have completed my review of the testimony transcribed on September 6, 1989, (a copy of which you furnished me on October 13, 1989) in the suit filed by your mother to have you removed as a co-trustee of the trust agreement between your father and you and your brother, as the co-trustees. In the following paragraphs, I will attempt to briefly give you my opinion of the testimony presented, particularly with regard to the estate planning aspects of what was done and the conflicting information that evolved that day over the proper amount to be funded into the marital trust as a consequence of your dad's death on November 22, 1986.

It is obvious to me that your mother's case against you for mismanagement was primarily based on the fact that you allegedly sought to deliberately diminish her share of your father's estate by persuading him to execute the second amendment to the trust agreement thereby increasing the funds available to your.

Through her attorney, she also alleged that your actions in withholding income distributions for a period of time in 1988 were contrary to the dictates of the trust agreement and thus irresponsible actions warranting your removal. In the same vein, both your mother and Larry seemed to be offended that you would have the gall to charge for your services as a co-trustee in spite of the considerable evidence you had that charges were justified and authorized by the clear language in the agreement itself.

As you know, I myself have spent a large amount of time reviewing your actions and assessing your performance as evidenced by the attached statement of charges. Apparently, my letter to your attorney dated August 22, 1989 was never admitted into evidence on a technicality. If you need to offer this current letter to support a motion for a rehearing or for an appeal if such should become necessary, I would like to attach a copy of that August 22nd letter as a part of my assessment of this case and in further support of my view that you have done an extraordinary job on this trust. In other words, I would like for it to be a part of the overall record and submitted as additional evidence, and incorporated by reference as a part of the present letter, to justify your

reasoning for requesting a rehearing or for an appeal.

I have seen nothing in my investigation of this transcript that would change any of my personal views about your performance as expressed in that letter.

As I read the transcript, the first thing that I found objectionable was Mr. Smith's contention that your interpretation of the trust and your actions as a family member and as a co-trustee were designed to accomplish one objective, i.e., to reduce your mother's income and thus increase your income. He contends that you falsely justified these actions to your parents and your brother as saving money for the Willoughby Family by reducing or eliminating administrative expenses and estate taxes.

Lonnie Stanley, the CPA who prepared the Form 706 (U.S. Estate Tax Return), clearly appeared to me to be confused about the finer points of estate planning and incapable of properly verbalizing the effect of the second amendment on both your father and your mother's estate plans. He also demonstrated that he did not understand marital deduction concepts. Since Alan Fields did little to refute any of Mr. Stanley's erroneous testimony, he too showed that he had little knowledge of what the estate plan was all about and what amounts were to be funded into the marital trust and the family trust.

If it would please you and the Court, I would like to clarify these concepts and what was done by the amendment, and thus prove that

your mother's interest in the overall family estate was not diminished and her income was not materially reduced.

********** skip over to page 3 **********

One objective of proper estate planning is to avoid the tax at the death of the surviving spouse. Essentially, that was the purpose of the second amendment - to insure the use of the full estate tax exemption in both your father and your mother's estates and virtually eliminate costly estate taxes.

Initially, the original trust assets placed in your dad's trust and your mom's identical trusts only comprised a small portion of their total assets. Their joint ownership of the Penn Oaks Apartments and the San Marco Motel was a problem from an estate planning standpoint because these assets would pass outside their wills to the survivor and create the problem that I alluded to above - a substantial part of your dad's unified credit would have been wasted and your mother's separate estate would have greatly exceeded her credit and significant estate taxes would have been incurred at her subsequent death.

You recognized that their original trust agreements were incomplete and inadequate from an estate planning standpoint. Several times in your testimony reference is made to saving taxes on "this estate." I think it is important to emphasize that this term meant our father's own assets, your mother's own assets, and the assets owned by the two of them jointly. The original trust agreement only

accomplished a part of the overall objective of saving estate taxes because your mom's estate was still going to be far larger than the exemption or unified credit if the planning had stopped here.

In reviewing your testimony and all of the previous correspondence that you provided me with, it is clear that while saving estate taxes was a primary motive in developing the second amendment, it was not the only motive. Your father was concerned about your mom's propensity for spending money on dubious causes and clearly wanted to restrict the funds that would be available to her at his death. It was his expressed desire for the estate to be divided three equal ways, or as close to this as possible. It is clear from the correspondence that I have seen that Larry was aware of this and your mother was aware of it and was agreeable to it.

For these reasons, namely, the inadequacy of the original trust agreement to save taxes on their total estates and their desires for you and Larry to share in their estates without waiting until both parents were deceased (as would have been the case under the original trust agreement), the second amendment was prepared and executed. Simultaneously with it, the mortgage notes on the two properties were funded into your dad's trust. This alleviated the problem of the jointly-owned property defeating the utilization of the unified credits in both of their estates.

There were some references in the testimony to splitting their estates so that each would

have approximately 50% of their total estates in their trusts. I did not note that anyone had ever considered this possibility in my review of the correspondence. Even if each owned one-half, or 50%, of the total joint estate, there would have still been an estate tax problem because a large part of your dad's 50% would have been included in your mom's estate and estate tax consequences would have resulted at her subsequent death. The use of his unified credit would have been minimal because there would have been a large marital deduction at his death.

At this point, it becomes important to review Lonnie Stanley's testimony. It was his belief that this second amendment was unnecessary to avoid estate taxes. That statement was true only to your dad's estate as everyone understood it at the time. The second amendment was designed to insure that none of your dad's unified credit ($500,000 at the time of his death) would have been wasted. The family trust was to contain assets valued to the maximum limit of the credit with the balance of the assets to comprise the marital trust. In this fashion, both your dad and mom's estates could avail themselves of each of their full unified credits and there would have been zero estate taxes at your mother's death. The second amendment, which created an ewe paragraph 5 was absolutely essential to accomplish the estate tax avoidance motive as you, Larry and your mom and dad understood. Mr. Stanley failed to either realize or point out this essential fact about the second amendment.

Your mom's attorney created the impression that the amendment only served your interest by reducing the income available to her and increasing the amount going to you and further contending that you even underfunded her marital trust contrary to the terms of the trust agreement.

To properly understand this, we need to review the Form 706 and apply the language in paragraph 5 of the amendment to the creation of the marital and family trusts keeping in mind the points that I have made.

***** two pages of mathematical calculations and explanations of the proper method of evaluating the proper funding of the Marital and Family Trusts. *********

Hopefully, this extensive recounting of the explanation of the amendment language will clarify all of the erroneous testimony.

As you know, you informed Larry of these calculation in August of 1987 and told him then exactly how much income would be available to your mom. [based upon CPA Stanley's Form 706 calculations] At that point, Leona was looking at an estate in her right of well over $500,000 consisting of the $308,245 by reason of your dad's death, her own trust of $100,000 and the balance of the "joint" assets ($127,659).

It was ludicrous for anyone to infer that your planning deprived her of income to your benefit when she essentially had income available to her from various sources in excess of $3,500

per month. It was also ludicrous for Mr. Smith to state that you underfunded the marital interest by 7% when I have shown it was well over 34%.

I feel that it would be unnecessary to reiterate my comments in the attached letter since I think that it explains why I felt your were justified withholding income payments because they were incorrectly calculated due to the fact that your fees would not be considered.

Also, my comments on your fees in that letter are about all that I can relate about that matter.

In conclusion, I would like to once again say that I think that you have done an extraordinary diligent job as a co-trustee for your family. You obviously have the experience and background concerning investments that a trustee needs to preserve and protect trust principal. The management of the mortgage notes is a job some people may take for granted, but you have performed the fiduciary duties in overseeing this asset that professional trustees are compelled to perform. I find that your certainly have not acted in a capricious, arbitrary fashion. You have tried your best to be informative, cooperative, and, above all, to act in a responsible manner.

I hope that you get a favorable ruling as that is how I think the Court would see your case if all of the erroneous information presented at the trial is discounted.

Good luck.

Very truly yours,

s/ Marion W. Beacham, Jr.
Vice President and
Trust Officer

MWB, Jr.:vm

Appendix M

RELEVANT CRIMINAL STATUTES

18 U.S.C. 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

****

This section providing penalty for conspiracy against rights of citizens and section 242 of this title providing penalties for deprivation of rights under color of law were designed to prevent violations of all rights guaranteed under U.S.C.A Amendment 14, including both due process and equal protection. ***U.S. v. City of Philadelphia***, C.A. Pa. 1980, 644 F. 2d 187

This section pertaining to conspiracy against rights of citizens encompasses due process and equal protection clauses of U.S.C.A. Const. Amend. 14 and is not unconstitutionally vague. *U.S. v. Guest*, Ga. 1966, 86 S.Ct. 1170, 383 U.S. 745, 16 L.Ed. 2d 239.

This section prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of this section, participated in by officials alone or in collaboration with private persons. ***U.S. v. Price***, Miss. 1966, 86 S.Ct. 1152, 383 U.S. 787, 16 L.Ed. 2d 267.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, is guilty of the federal crime of misprision of felony. **18 U.S.C.A. 4.** ***United States v. Peristein***, C.C.A.N.J., 126 F.2d 789, 798. ***U.S. v. Ciambrone***,C.A. Nev., 750 F. 2d 1416, 1417. See Black's Law Dictionary, Sixth Edition, page 1000.

Single conspiracy may have several purposes, but if one of them , whether primary or secondary, be violation of federal law,

conspiracy is unlawful under federal law. ***Anderson v. U.S.***, W. Va. 1974, **94 S.Ct.** 2253, 417 U.S. 211, 41 L.Ed.2d 20.

Any conspiracy to deprive a person of any of his constitutional rights is reprobated. ***Martynn v. Darcy***, D.C. La. 1971, 333 F.Supp 1236.

Collins v. Collins, **597 F.Supp. 33 (N.D. Ga. 1984)** shows that the district courts have authority to enjoin violations of constitutional rights, and shows that concerns about comity and federalism must give way to the ultimate duty of the court to protect constitutional rights, especially those which the state court system has been unable or unwilling to protect itself.

The case of Lewellen v. Raff, **649 F. Supp. 1229 (E.D. Ark. 1986)** and **843 F.2d 1103 (8th Cir. 1988)** provide relevant judicial guidance about the district court's authority to vindicate a litigant's civil rights.

It is patently unconstitutional for an agent of the state to pursue a course of actions whose objective is to penalize a person's reliance on his legal rights. ***Bordenkircher v. Hayes***, **434 U.S. 357, 363, 98 S.Ct. 663, 667, 54 L.Ed. 2d 604 (1978)**, citing ***North Carolina v. Pearce***, 395 U.S. 711, 725, 89 S.Ct. 2070, 2080, 23 L.Ed. 2d 656 and ***Chaffin v. Stynchcombe***, 412 U.S. at 32-33, n. 20, 93 S.Ct., at 1986.

Chambers v. NASCO, INC., 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991), rehearing denied 112 S.Ct. 12, 115 L.Ed.2d 1097, shows that a federal court has power to conduct an independent investigation in order to determine whether it has been the victim of fraud.

18 U.S.C.A. 1341 (Mail Fraud Statute).

U.S. v. EISEN, 974 F.2d 246 (2d Cir. 1992) shows that attorneys can be convicted of mail fraud when the attorney uses fraudulent conduct in civil litigation actions and uses the U.S. Mail to carry out a portion of the fraudulent litigation scheme.

U.S. v. DRURY, 687 F. 2d 63 (5th Cir. 1982) shows that Defendant attorney was convicted of mail fraud.

FLORIDA CRIMINAL STATUTE

839.13 Falsifying records.

(1) If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corruptly withdraw, falsify or avoid any record, process, charter, gift, grant, con veyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or shall forge, deface, or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgement, or certificate, or shall fraudulently alter, deface, or falsify any minutes, documents, books, or any proceedings whatever or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in **S. 775.082 or s. 775.083.**

****

775.082 Penalties.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows: **(a)** For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year.

775.083 Fines.

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(d) $1,000, when the conviction is of a misdemeanor of the first degree

(f) Any higher amount equal to double the pecuniary gain derived from the offense by offender or double the pecuniary loss suffered by the victim.

Fla. Stat. 839.25.

It is **Official Misconduct** for a public servant (includes judicial officers), with corrupt intent, to obtain a benefit for himself or another or to cause unlawful harm to another by:

(a) Knowingly refraining, or causing another to refrain, from performing a duty

(b) Knowingly falsifying, or causing another to falsify, any official record or official document. Violation of statute is a felony of the third degree.

CRIMES INFORMATION

"**Corruption**" is defined as:

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. **Black's Law Dictionary, Sixth Edition, page 345.**

Even with the purest intentions and sentiments, no judge may put himself above the law. ***D. M. v. Korda***, 562 So.2d 407 (Fla. 4th DCA 1990) citing ***Pullman v. Allen***, 466 U.S. 522, **104 S.Ct. 1970**, 80 L.Ed. 2d 565 (1984).

Violations of canons which require judge to uphold integrity and independence of judiciary, avoid impropriety and appearance of impropriety, perform duties of office impartially and diligently, and violation of attorney rules requiring impartiality and decorum in tribunal, prohibiting attorney from making statement known to be false and engaging in misconduct warrants public reprimand. **Inquiry Concerning a Judge, 563 So.2d 83 (Fla. 1990)**